

the nearest, therefore, they inherit under all conditions. These relations are the nearest and most direct of all relationships that human beings have, others being indirect. So, the Holy Qur'an takes up their shares first and beginning from the share of children, it says:

يُوصِّيْكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلَّذِكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ

Allah directs you concerning your children: for a male there is a share equal to that of two females.

This is a universal rule which entitles boys and girls both as recipients of inheritance, determines the shares of each and, at the same time, unfolds the operative rule in the event the deceased leaves behind both male and female children when their shares in the property will be distributed in a way that each boy gets twice that of a girl. For instance, if someone leaves behind one boy and two girls, the property will be split in four portions or shares out of which 2/4 will be given to the boy and 1/4 to each girl.

The importance of giving shares to girls

The Holy Qur'an demonstrates visible concern to ensure that girls are given their share when it mentions the share of girls as a basis for determining the share of boys. In other words, instead of saying - 'for two females there is a share equal to that of one male'- it has elected to say: (لِلَّذِكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ) (for a male there is a share equal to that of two females.) Those who do not give shares to sisters on the pretext that they have forgone their right are in error, because their sisters usually do not forgo their rights willingly. Done reluctantly, with the knowledge that they are not going to get anything anyway, they think, why create bad blood between brothers and sisters? Such an act of forgiving is not valid under Islamic law. Their claim remains due against brothers - and those who usurp inheritance are terrible sinners. In case minor girls hold shares in such inheritance, not giving them their shares is a sin committed twice by usurping the share of a legal heir and by devouring the property of an orphan.

As part of further explanation later, the share of girls has been described by saying:

فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ

It means that, if there is no male child and there are only girls and

they are more than one, then, they shall get two-third of the inherited property in which all girls will be equal sharers. The remaining one-third will go to other rightful heirs of the inheritance, such as the parents of the deceased, wife or husband. Two girls and more than two will all share in the two-third.

The share of 'more than two' girls appears in the Qur'anic verse very clearly فَوْقَ اثْتَنَيْنِ (more than two). However, if there are two girls only, they are governed by the same rule which governs more than two. The proof appears in Hadith:

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ خَرَجْنَا مَعَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حَتَّى جِئْنَا إِمْرَأَةً مِنَ الْأَنْصَارِ فِي الْأَسْوَافِ فَجَاءَتِ الْمَرْأَةُ بِابْنَتَيْنِ لَهَا فَقَالَتِ يَا رَسُولَ اللَّهِ هَاتَانِ بْنَتَانِ ثَابَتْ بْنَ قَيْسٍ قُتِلَ مَعَكُمْ يَوْمَ أَخْذَهُ فَمَا تَرَى يَا رَسُولَ اللَّهِ فَوَاللَّهِ لَا تَنْكِحَنَا إِبْرَاهِيمَ وَلَهُمَا مَالًا إِلَّا أَخْذَهُ فَمَا تَرَى يَا رَسُولَ اللَّهِ فَوَاللَّهِ يَقْضِي اللَّهُ فِي ذَلِكَ وَقَالَ نَزَّلَتْ سُورَةُ النِّسَاءِ "يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ" إِلَيْهِ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ادْعُوا لِي الْمَرْأَةَ وَصَاحِبَهَا فَقَالَ لَعَمَّهَا اعْطُهُمَا الشَّتَّى وَاعْطُ امْهَمَاهُمَا الشَّتَّى وَمَا بَقِيَ فِلْكَ، (ابوداؤد كتاب الفرانض، وبعنه في الترمذى ابواب الفرانض)

Sayyidna Jabir ibn 'Abdullah has reported the following event: "Once we went out with the Messenger of Allah ﷺ until we passed by an Anṣārī woman in the neighbourhood of Aswāf. The woman came along with her two girls and said: O Messenger of Allah, these two girls are daughters of Thābit ibn Qays (my husband) who fell a martyr at the battle of Uhud while with you. The uncle of these girls has taken possession of whatever they had of their entire inheritance and has left nothing for them. What do you say about it, O Messenger of Allah? By Allah, these girls can never hope to be taken in marriage by anyone unless they have some assets. Then, the Holy Prophet ﷺ said: Allah will decide in this matter

Sayyidna Jabir رضي الله عنه says: When this verse of Sūratun-Nisa' was revealed, the Holy Prophet ﷺ said: Call that woman and the man she mentioned (the brother of her deceased husband who had taken possession of his entire property). He said to the uncle of the girls: Give the girls two-

thirds of the entire property; their mother, one-eighth and what remains is for you.

(Abū Dāwūd, Kitāb al-Fara'īd & Tirmidhī, Abwāb al-Fara'īd)

In the case mentioned in the *hadīth*, the Holy Prophet ﷺ gave out two-third to two girls as well, following the very rule of more than two which appears in the verse of the Holy Qur'an under reference.

After that, it was said: وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا الْيُصْفُ It means: If the deceased left behind one girl only and no other children, then, she will get one-half of what her father or mother have left behind. The rest will go to other inheritors.

The share of parents

The text, moving to the share of the parents of the deceased, mentions three states:

1. Firstly, the deceased may have left behind parents who are still alive, and children too, whether only one boy or girl, in which case, the father and mother will get 1/6 each. The legacy that remains will go to children, wife or husband. There are particular circumstances when some of the remainder returns back to the father which is in addition to the one-sixth fixed for him. In the terminology of 'Ilmu'l-Fara'īd (The Science of the Laws of Inheritance), such entitlement is known as the entitlement of "Ta'sīb: تَصْبِيبٌ (Agnatic kinship).

2. Secondly, under a situation when the deceased has no children, brothers or sisters, but does have parents still living, the mother will get 1/3 of the inherited property while the father will get the remaining two-third. This rule governs a situation when the husband or the wife of the deceased is not alive to share in his inheritance. If the husband or wife is present, their share will be taken out first and from what remains, 1/3 will go to the mother and 2/3 to the father.

3. Thirdly, under a situation when the deceased has no children but does have brothers and sisters whose number is two, whether two brothers or two sisters, or more than two, then, under that situation, the mother will get one-sixth and, if there are no other heirs, the remaining 5/6 will go to the father. As evident, the presence of brothers and sisters has reduced the share of the mother, but the brothers and

sisters will get nothing because the father is nearer as compared to brothers and sisters. What remains will go to the father. In this situation, the share of the mother has come to 1/6 instead of 1/3. In the terminology of 'Fara'id', this is known as "Hajb al-Nuqṣān". The presence of these brothers and sisters causing reduction in the share of parents, irrespective of whether they are real or whether they are from the same father but different mother or whether from the same mother but different father, under all such conditions, their presence will reduce the share of the mother - subject to their being more than one.

The text, after describing the fixed share, says:

اَبَاكُمْ وَأَبْنَائُكُمْ لَا تَدْرُونَ اَقْرَبَ لَكُمْ نَعْمَةً فِرْضَةً مِّنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلَيْمًا حَكِيمًا

It means: 'These shares for children and parents have been determined by Allah Almighty Himself in His infinite wisdom because He is Wise and He knows everything. The shares fixed have great considerations behind them. If the distribution of inheritance was left to your opinion, you would have made beneficialness the criterion of such distribution. But, who will be the best to receive or deliver real benefit is something which would have been difficult for you to ascertain with any measure of certainty. Therefore, 'nearness in kinship' was preferred to 'being beneficial' as the criterion of the injunction.'

This verse of the Holy Qur'an clearly declares that the shares of inheritance determined by Allah Almighty are settled injunctions from Him. Nobody has any right to enforce opinion or to increase or decrease its stipulations. These should be accepted whole-heartedly. This command from everyone's Creator and Master is based on what is wise and beneficial for human beings. There is no aspect of benefit outside the expanse of His knowledge and there is no command He gives bereft of some or the other element of wisdom. Man cannot, all by himself, recognize his gain and loss in the real sense. If this question of the distribution of inheritance was left to man's personal opinion, it was certain that man would not have decided correctly because of his limitations in understanding and, as a result of which, lack of moderation and justice would have affected the distribution of

inheritance. So, Allah Almighty, in His most exalted majesty, took this responsibility in His hands so that justice and equity reign supreme in the distribution of property and the capital left by the deceased circulates in the hands of competent inheritors in a manner which is just and equitable.

Verse 12...

وَلَكُمْ نِصْفٌ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ
لَهُنَّ وَلَدٌ فَلَكُمُ الرُّبُعُ مِمَّا تَرَكْنَ مِنْ بَعْدِ وَصِيَّةٍ يُؤْوَضِعُنَّ بِهَا
أُوْدَيْنٍ وَلَهُنَّ الرُّبُعُ مِمَّا تَرَكْتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ
لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكْتُمْ مِنْ بَعْدِ وَصِيَّةٍ يُؤْوَضِعُونَ
بِهَا أُوْدَيْنٍ ﴿١٢﴾

And for you there is one-half of what your wives left behind, in case they have no child. But, if they have a child, you get one-fourth of what they left, after (settling) the will they might have made, or debt. And for them (the wives) there is one-fourth of what you left, in case you have no child. But, if you have a child, they get one-eighth of what you left, after (settling) the will you might have made, or debt. [12...]

Upto this point, the text has described the shares of those competent to inherit, those who had the affinity of lineage and birth with the deceased. The present verse talks about some others who do have the competence but are not related by lineage. Instead, they are related by marriage. Details appear in the Commentary.

Commentary

The share of the husband and the wife

In this part of verse 12, the shares of the husband and the wife have been determined. The share of the husband has been mentioned first, perhaps to show its importance because after the death of the wife, the husband becomes part of some other family. If the wife dies at the home of her parents with her assets too being there, her people may avoid giving the share due to the husband. By describing the right of the husband first, the Holy Qur'an has possibly condemned

this practice. To explain in details, it means that in case the deceased wife has left no child behind, the husband will get, after the payment of debt and execution of will, one-half of the total property left by the deceased. Out of the remaining half, other heirs, such as the parents of the deceased, her brothers and sisters, will get their shares according to rules set for them.

If the deceased wife has left children - one or two or more, whether male or female, either from the same husband, or from some previous husband, then, the present husband will get, after the payment of debt and execution of will, one-fourth of the total property left by the deceased woman. Shares from the remaining three-fourth will go to other heirs.

If it is the husband who dies leaving his wife behind and leaves no children, the wife will get, after the payment of debt and the execution of will, one-fourth of the total property left by the deceased. And if he has left a child - either from the present wife or from some other wife - she will get, after the settlement of debt and will, a one-eighth share. And if the deceased husband had more than one wife, all alive at the time of his death, the attending details shall remain the same, however, the share prescribed for the 'wife' (i.e. $1/4$ or $1/8$) shall be divided equally between all the wives. In other words, every woman will not get a share of one-fourth and one-eighth. Instead, all wives will share the one-fourth or one-eighth equally. Then, under both these conditions, the inheritance which remains after settling the share of the husband/wife will be distributed among other heirs left by them.

Ruling

It must be ascertained before the distribution of inheritance that the *mahr* (dower) of the wife has been paid. If the deceased has not paid the *mahr* of his wife, this will be taken as debt, and will have to be paid first from the total property, like all other debts. The inheritance will be distributed only after that. It should be noted that the woman, after having received her *mahr*, shall go on to receive her fixed share in the inheritance as a competent inheritor. And in case, the property left by the deceased is not more than the value of dower, and nothing remains after it is paid, the entire property will be given to the woman against her debt of *mahr* very much like other debts and,

as a result, no heir will receive any share from the inheritance thus used up.

... Verse 12

وَإِنْ كَانَ رَجُلًا يُورَثُ كَلَّلَةً أَوْ امْرَأً وَلَهَا أخٌ أَوْ أخْتٌ فَلِكُلِّ
وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شَرَكَاءُ
فِي التُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُؤْوَضِي بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارِّ
وَصِيَّةٌ مِّنَ اللَّهِ وَاللَّهُ عَلَيْهِ حَلِيمٌ ﴿٤٢﴾

And if the man being inherited, or the woman, is *Kalālah* (having no father or son to inherit) and he has a brother or a sister, then, for each of them there is one-sixth. And if they are more than that, they shall be sharers in one-third, after (settling) the will that might have been made, or debt, causing no damage. All this is prescribed by Allah. And Allah is All-Knowing, Forbearing. [...12]

After having made a brief mention of rights of relations emerging from lineage and marriage, the text now introduces the injunction which covers the inheritance of a particular deceased who has left no children or parents, details of which appear below

The inheritance of *Kalālah*

This later part of verse 12 describes the injunction relating to the inheritance of *Kalālah*. There have been many definitions of *Kalālah*. Al-Qurtubī reports these in his *Tafsīr*. According to the most well-known definition, 'A person who dies leaving no ascendants and descendants is *Kalālah*'.

'Allāmah al-Ālūsī, the author of *Rūh al-Ma'ānī* says that *Kalālah* is really a verbal noun used in the sense of *Kalāl'* meaning 'to become exhausted' which denotes 'weakness'. The name *Kalālah* has been applied to every relationship other than that of father and son because that relationship is weak as compared to the relationship of father and son.

Moreover, the word, *Kalālah* has also been applied to the deceased who left no son or father to inherit, as well as to the inheritor who is

neither the son nor the father of the deceased. The lexical derivation requires that the word, *jī : dhū*, should be deemed as understood though not expressed explicitly. Thus *Kalālah* will be taken in the sense of *Dhū Kalālah*, meaning 'one having weak relation'. Later on, the word also came to be applied to the property left as inheritance by a deceased having no son and father.

In gist, if a person, man or woman, dies and leaves behind neither father nor grandfather nor children, but does leave a brother or sister from the same mother and different father, the brother will get 1/6 and, if there is none, the sister will get 1/6. However, if they are more than one (for example, there may be one brother and one sister, or two brothers and two sisters) then, they all will share one-third of the entire property of the deceased. Here, the male will not get twice that of the female. 'Allamah al-Qurtubi says:

وَلَيْسَ فِي الْفَرَائِضِ مَوْضِعٌ يَكُونُ فِيهِ الذَّكْرُ وَالْأُنْثَى سَوَاءً إِلَّا فِي مِيرَاثِ
الْأُخْوَةِ لِلْأُمُّ

The share of the brother and sister

Let it be clear that this verse refers to the share of *Akhyāfi* brothers and sisters (i.e. from the same mother and different fathers; also referred to as half-brothers and half-sisters). Though, this restriction has not been mentioned in the present verse, but consensus holds it as creditable. The *Qirā'ah* or rendition of Sayyidnā Sa'd ibn Abī Waqqāṣ in this verse is: وَلَمْ يَأْتِ أَخْرُجْ مِنْ أُمّةٍ (and he has a brother or sister from his mother) as has been reported by al-Qurtubī, al-Ālusi, al-Jassās and others. Although this rendition has not come to us through *tawātur* (a consistent narration of a very large number of persons in all ages) but because of the consensus of the entire Muslim *ummah*, it is worth practicing. Another clear proof is that Allah Almighty mentions the inheritance of *Kalālah* at the end of Sūrah Al-Nisā' as well. If, it has been said there, there is one sister, she will get half. And if there is one brother, he will inherit the entire property of his sister. And if there are two sisters, they will get 2/3. And if there are several brothers and sisters, the male will be given twice that of the female. This injunction appearing at the end of the Sūrah refers to '*Aini*' (real and full) brothers and sisters, and to '*Allatī*' (from the same father and

different mothers) brothers and sisters. If 'Allātī' and 'Ainī' brothers and sisters were to be included here, it will cause a contradiction in injunctions.

The issues regarding will (Wasiyyah)

The shares of inheritance have been described thrice in this section and it has been said that this distribution of shares comes after the execution of will and the payment of debt. As it has been stated earlier, one-third of what remains of the property, after taking care of the cost of the funeral for the deceased, and payment of debts, shall be applied to the execution of the will. If the will exceeds the extent of one-third, it is not legally enforceable. According to the rule of Shari'ah, the payment of debt comes before the execution of will. If the entire property is used up in paying debts, there will be no will to execute and no property to distribute. At all the three places where 'will' has been mentioned, 'it' appears before 'debt'. As obvious, this gives the impression that the right of 'will' precedes 'debt'. Removing this misunderstanding, Sayyidna 'Alī رضي الله عنه said:

انكم تقرأون هذه الآية منْ بَعْدِ وَصِيَّةٍ تُوَصَّنَ بِهَا أَوْدِينُ، وَان رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَضَى بِالدِّينِ قَبْلَ الْوِصِيَّةِ . (مشكوة بحواله ترمذی ص ۲۶۴)

(You recite the verse: that is, 'after settling the will they might have made, or debt' [where 'will' comes first] but [practically] the Holy Prophet, may peace be upon him, has settled, 'debt' before 'will').

Still, we have to know the point as to why will follows debt 'practically' while, in words, it has been mentioned earlier. In this connection, the author of Ruh al-Ma'anī has this to say:

وتقديم الوصية على الدين ذكرًا مع ان الدين مقدم عليها حكما لاظهار
كمال العناية بتنفيذها لكونها مظنة للتغريط في ادائها الخ .

It means that the mention of will before debt in this verse is to emphasize upon the enforcement of the wills. Since the beneficiary of a will deserves it without any price paid by him, and often without having a kinship with the testator, it was likely that the inheritors ignore to enforce it or, at least, may cause unnecessary delay in its execution, because they may have not liked to see the property that

was to be inherited by them going to somebody else. So, it was to keep up the importance of will that it was mentioned before debt. Then, it is also not necessary that every person incurs a debt, and if a person incurs it during his life-time, it is not necessary, that the said debt remains unpaid upto the time of his death. And even if the debt was due to be paid at the time of death, even then, since the claim of debt comes from the debtors to which the inheritors cannot say no, the likelihood of any shortcoming in this respect is slim. This is contrary to the case of will in which the deceased, when he bequeaths part of his property, earnestly desires that he should invest it in something good which serves as ongoing charity on his behalf. Since, there is no chance of a claim on this bequeathed property from any side, there was a possibility that the inheritors themselves might fall into some sort of shortcoming, so, it was to offset this likelihood that the 'will' has been mentioned first everywhere as a special measure.

Rulings

1. If there is no debt and no will, the entire property, after taking care of the funeral expenses, will be distributed over the inheritors.

2. Making a will in favour of a heir is not lawful. If someone makes a will in favour of his son, daughter, husband or wife, or for someone else who is going to get a share in his inheritance, then, this will is not enforceable. The inheritors will get what is coming to them as their share in the inheritance. They are not entitled to more than that. The Holy Prophet ﷺ said in his famous address on the occasion of his last Hajj:

إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِيْ حَقٍّ حَقَّهُ فَلَا وَصِيَّةَ لِوَارِثٍ . (مشكوة بحواله ابو داود ص)

(۲۶۰)

(Surely, Allah has given every person his (or her) right. So, there is no will for an inheritor.) (Mishkat with reference to Abu Dawud, p. 265)

However, should other inheritors permit, the will made in favour of a particular inheritor, may be executed first and, then, the rest of the property may be distributed in accordance with the method laid down by the Shari'ah, in which the particular inheritor will also get his fixed share from the inheritance. Some *hadīth* narrations do carry the excep-

tion of اَنْ يَشَاءُ اللَّهُ رَبُّكُمْ (unless inheritors wish). (as in al-Hidāyah).

The words غَيْرُ مُضَارٍ (causing no damage) appearing after the rules of inheritance of *Kalālah* have a special significance. They are to warn that even though the execution of the will and paying off the debts have precedence over the shares of the heirs, yet this rule should not be misused to cause harm to the genuine inheritors.

If anyone makes a will or makes a false admission of indebtedness so as to deprive inheritors, then, he is doing something strictly forbidden and is committing a major sin.

There are many ways damage can be done through debt and will. For example, one may deliberately lie that he is in debt, just to let that be given to a friend or somebody else. Or, he may show something special which he owns personally as something he holds in trust for somebody so that it can stay out of the total inheritable property. Or, one may make a will for property beyond the extent of one-third. Or, he lies about an unpaid loan he gave to somebody and says that the debt was paid off so that it does not pass on to the inheritors. Or, one may, during his illness culminating in death (مرض الموت), make a gift of more than one-third in the name of somebody.

These are forms of causing damage. Every legator who is going to bid farewell to this mortal world should do his best to stay away from causing such damages during the last moments of his life.

It should be noticed that although the words 'causing no damage' have appeared only with the rules relating to *Kalālah*, however, the rule laid down by them is general and is also understood at two previous places where the precedence of will and debt has been mentioned in these verses. Therefore, it is not the *Kalālah* only who should refrain from causing harm to his inheritors, but the same rule applies to all persons who wish to make a will.

The emphasis on distribution according to fixed shares

Towards the end of the verse, after the shares of inheritance have been described, Allah Almighty has said: وَصِلَةٌ مِّنَ اللَّهِ (All this is prescribed by Allah). It means that it is imperative to act upon whatever has been prescribed in relation to shares as fixed and the payment of debt and the execution of will as emphasized. Being a

mandate and injunction of supreme significance, one should do nothing to contravene it. Then, as additional warning it was said: ﴿وَاللَّهُ عَلِيمٌ حَذِيرٌ﴾ (And Allah is All-Knowing, Forbearing). It means that Allah knows everything and He has apportioned these shares knowing everybody's true state of being as in His knowledge. Whoever obeys and acts in accordance with these injunctions, this good deed of his shall not remain outside the reach of His knowledge. And whoever contravenes these injunctions, this evil conduct of his shall certainly appear as it is in the knowledge of Allah for which he shall be held accountable.

In addition to that, if a deceased person has caused damage to his heirs through debt or will, Allah knows that as well. So, one should never be fearless from Allah's punishment. However, it is quite possible that Allah Almighty may not punish a person right here in this mortal world, because He is Forbearing. But, the one who disobeys and acts in contravention should better not deceive himself by thinking that he really got away.

Verses 13 - 14

تِلْكَ مُحَدُّودَاتُ اللَّهِ وَمَنْ يُطِيعُ اللَّهَ وَرَسُولَهُ يُدْخِلُهُ جَنَّتٍ تَجْرِي
 مِنْ تَحْتِهَا الْأَنْهَارُ حَلِيلِينَ فِيهَاٰ وَذَلِكَ الْفَوْزُ الْعَظِيمُ ۝
 وَمَنْ يَعْصِي اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ مُحَدُّودَةً يُدْخِلُهُ نَارًا خَالِدًا
 فِيهَا سَوْلَةٌ عَذَابٌ مُهِينٌ ۝

These are the limits set by Allah. And whoever obeys Allah and His Messenger, He will admit him to gardens beneath which rivers flow, remaining there for ever. And that is a great success. [13] And whoever disobeys Allah and His Messenger and crosses the limits set by Him, He shall admit him to the Fire, remaining there for ever. And for him there is a humiliating punishment. [14]

Commentary

It is the consistent style of the Holy Qur'an that whenever it has described the beliefs and injunctions prescribed by Allah, it is followed by promises of reward or warnings of punishment.

This is what has been done here in these two verses after mentioning the rules of inheritance. The purpose is to stress upon Muslims to obey these injunctions.

SOME ADDITIONAL RULES OF INHERITANCE

A Muslim cannot inherit from a *Kafir*

Although, the distribution of inheritance is based on nearness of kinship, but there are certain exceptions to this rule. First of all, the deceased and his inheritor should not be from two different religions. Therefore, a Muslim will not inherit from any *kafir* and no *kafir* from a Muslim, no matter what lineal relationship they may have between them. The Holy Prophet ﷺ said:

لَا يَرثُ الْمُسْلِمُ الْكَافِرُ وَلَا الْكَافِرُ الْمُسْلِمُ (مشكوة ص ٢٦٣)

(The Muslim does not inherit the *kafir*, nor does the *kafir* inherit) the Muslim.) (Mishkāt, p. 263)

This rule relates to a situation when a person is a Muslim or a *kafir* by birth. But, if a person who was first a Muslim, turned away from Islam and became an apostate and died or was killed in that state of apostasy, all his earnings while being a Muslim shall go to his Muslim inheritors, and whatever he may have earned after his apostasy shall be deposited in the *Bayt al-Māl* (Public Exchequer).

But, if a woman becomes an apostate, all her property, whether acquired during her days of Islam or during apostasy, shall go to her Muslim inheritors. However, an apostate as such, man or woman, shall not inherit from any Muslim nor from any other apostate.

The inheritance of the killer

If someone kills a person from whose property he was entitled to receive a share, he shall no longer remain his inheritor and shall be excluded from the inheritance of the person whom he has killed.

The Holy Prophet ﷺ said: أَقْتَلُ لَا يَرثُ (مشكوة ص ٢٦٣) (The killer shall not inherit.) (Mishkāt, p. 263) However, some forms of *qatl al-khatā'* (accidental or unintended homicide) are excepted from this rule, details of which appear in books of *Fiqh*.

The inheritance of the unborn child

If a person leaves some children and his wife is pregnant, then this

unborn child will also be counted among inheritors. But, since it is either difficult or uncertain to determine the sex or the number of children in the mother's womb, it would be appropriate to postpone the distribution of inheritance until the birth of the child. If, the distribution of property has to be made necessarily, then, as an expedient measure, one must suppose two situations in terms of a boy or a girl and distribute to the inheritors the lesser portion coming out of the two situations. The remaining should be held for the child-to-be-born.

The inheritance of a woman in the period of 'iddah

In case a person divorces his wife and the divorce is revocable, and this person dies before the revocation of the divorce and the expiry of his wife's waiting period, then this woman will get a share in the inheritance, for the marriage is in force.

If a person divorces his wife during his sickness culminating in his death, even though the divorce is irrevocable or pronounced thrice, and he died before the expiry of the waiting period, even then, this woman will get a share in the inheritance. And in order to make her inherit, the longer of the two waiting periods shall be taken as operative in the following manner.

The waiting period following a divorce is three menstrual periods and the waiting period following the death of the husband is four (lunar) months and ten days. The waiting period out of the two which lasts longer shall be prescribed as the waiting period for the aforesaid woman so that the woman may get a share in the inheritance as far as possible.

And if a person divorces his wife, irrevocably or by pronouncing it thrice, prior to any sickness culminating in his death and, a few days later he passes away during the period of his wife's waiting period, then, she will not get a share in the inheritance under this situation. However, if the divorce given was revocable, she will inherit.

Ruling:

If a wife secures a separation from the husband at her own instance (خالص : *khul'*) within the period of his sickness which culminates in his death, then, she will not be an inheritor, even though her husband may die during her waiting period.

The inheritance of '*aṣbāt'*

There are twelve heirs for whom specified shares have been settled and fixed by the Shari'ah known as *Fara'id*. These heirs are called اصحاب الفرض *aṣhabul-furūd*, that is, 'the possessors of obligatory shares in inheritance as determined in the Holy Qur'an.' These have been explained earlier. If there is no heir from the category of *aṣhabul-furūd* or there remains some property after shares have been given to *aṣhabul-furūd*, this remainder or residue is given to '*aṣbah*' (agnatic heir, or residuary). There are times when one person alone inherits in both capacities. There are other situations when the children of the deceased and his father too become '*aṣbah*' and so do the offspring of the father, that is, the brother.

There are several kinds of '*aṣbāt*' or agnates, details of which appear in the books of *Fara'id*. To illustrate, here is an example: Zayd died leaving behind four heirs - wife, daughter, mother and uncle. Zayd's property will be divided into a total of twenty four shares. Half of these, that is, twelve shares will go to the daughter, three shares to the wife against her 1/8, four shares to the mother against her 1/6, and the residue of five shares will go to the uncle in the capacity of his being '*aṣbah*', the nearest male agnate.

Rulings

1. If there are no '*aṣbāt*' (agnatic heirs) the residue of the property following the distribution of shares to *aṣhabul-furūd*, is also given to them. In the terminology of '*Ilmul-fara'id*', this is known as the principle of *Radd* or Return since the residue 'returns' to them in proportion to their shares. However, the husband or the wife is not entitled to this 'return' and they are not given any more than their specified shares.

2. If there is no one from *aṣhabul-furūd* and no one from '*aṣbāt*' either, the inheritance goes to *Dhawil-Arḥām* (maternal kinsmen). There is a large list of *Dhawil-Arḥām* which includes maternal grandsons and grand daughters, offspring of sisters, paternal aunts, maternal uncles, and aunts. Since the subject has lot more details which cannot be taken up in the present context, it is hoped that comments already offered will be sufficient.

Verses 15-16

وَاللّٰهُمَّ يَا أَيُّهُنَّ الْفَاجِحَةَ مِنْ نِسَائِكُمْ فَامْسِتْ شَهِدُوا عَلَيْهِنَّ
 أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا قَاتِلُوكُوْهُنَّ فِي الْبُيُوتِ حَتَّى
 يَتَوَفَّهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللّٰهُ لَهُنَّ سَيِّلًا ﴿١٥﴾ وَالَّذِينَ يَا تِبْيَنُهَا
 مِنْكُمْ فَأَذْوَهُمَا فَإِنْ تَابَا وَأَصْلَحَا فَاعْرُضُوا عَنْهُمَا إِنَّ اللّٰهَ
 كَانَ تَوَّابًا رَّحِيمًا ﴿١٦﴾

And those of your women who commit the shameful act, then have four witnesses from among you. So, if they do testify, then confine those women to their homes until death overcomes them or Allah prescribes a way for them. [15] And those two of you who commit it, torture them both. But if they repent and amend, turn away from them. Surely, Allah is Most-Relenting, Very-Merciful. [16]

Sequence

In previous verses, the objective was to correct the malpractices of the days of ignorance committed about orphans and inheritances. The people of *jahiliyyah* also used to subject women to cruel treatment. They had certain other evil customs also, such as marrying prohibited women.

The present verses are meant to correct such customs, however, it has been permitted that if a woman commits a proven guilt, she can be punished. This subject of correcting the evil customs will continue through the next two or three sections.

Commentary

These verses prescribe punishments for men and women who commit *zina*, (adultery or fornication). If this comes from women, the first verse requires the presence of four male witnesses to prove it. It means that the executive authority before which the case goes should call for four qualified witnesses to prove *zina*. Then, it is necessary that all the witnesses are male. The testimony of women in this connection is not valid.

Since the guilt of *zina* is of extremely grave nature which not only

violates honour and modesty, but also brings bad name to the family, Islam has taken very strict attitude while setting the standard of evidence to prove this guilt. Firstly, there came the condition that witnesses have to be men; the evidence of women was not considered valid. Secondly, the number of the required witnesses is raised to four. As obvious, this condition is very hard to meet. It is something which can very seldom take place. This strict approach was taken so that the husband of the woman, his mother or (another) wife or sister do not level undue accusations against her out of personal spite. It was also to check that other ill-wishing people do not get any chance to release their personal hostility by accusing her falsely. Testimony to *zina* by less than four individuals renders their evidence invalid in which case the complainant and the witnesses may all be charged as liars and the *Hadd* of *Qadhf* (punishment for false accusation) becomes operative against them for having falsely accused a Muslim.

It has been very clearly said in Surah An-Nur:

لَوْلَا جَاءُوكُمْ مَا عَلِيَّ بِأَنْ يَكُونَ شَهَدَاءَ فَإِذْلَمْ يَأْتُونَا بِالشَّهَادَةِ فَأُولَئِكَ عِنْدَ اللَّهِ هُمُ الْكَاذِبُونَ

which means that those who cannot produce four witnesses are liars.

Some revered elders, describing the wisdom behind the need to have four witnesses, have said that since this case involves two individuals, man and woman, this one single case comes, so to speak, under the purview of one rule for two cases. Since each case requires two witnesses, so four witnesses will be necessary in this case.

Towards the end of the verse, it is said that should they both repent and correct themselves, then, leave them. It means that, in case they have repented after punishment, they should not be disgraced and punished any more. It does not mean that the act of repentance has absolved them of the punishment because this repentance has been mentioned after punishment as obvious from the ramification of the letter *fâ'* (literally, "then, turn away", which has been left as understood in the present translation). However, in case repentance has not been made, reproach is in order even after punishment.

No definite *Hadd* (punishment) has been described in these two

verses of the Holy Qur'an. What has been said here is limited to "torture them" and "confine the fornicating women to their homes". No particular method of such "torture" has been described either, and this has been left to the discretion of the authorities. Sayyidna Ibn 'Abbas رضي الله عنه says that torture here means that they should be verbally reproached and put to shame, as well as, given physical punishment such as hitting with hands and shoes ... This statement reported from Sayyidna Ibn 'Abbas رضي الله عنه appears to be illustrative. The fact of the matter is that this whole thing has been left to the discretion of the authorities.

In the order of revelation, the injunction 'to torture' the adulterers came first, and it was later that the women guilty of adultery were ordered to be 'confined to their homes'. While giving this command, the Holy Qur'an has mentioned two limits for the period of their confinement. The words used are: "Confine those women to their homes until death overcomes them or Allah prescribes a way for them". It means that such women shall be confined to their homes till their death, however, if Allah prescribes some other punishment for them while they are still alive, then that punishment will replace the punishment of confinement. That new (expected) punishment has been referred to in this verse as 'a way' prescribed by Allah. Later this 'way' as promised in this verse was prescribed and was revealed. Interpreting the word 'way' used in this verse, Sayyidna Ibn 'Abbas رضي الله عنه says, (عنى الله عنه) الْرَّجْمُ لِلشَّيْبِ وَالجلدُ لِلْبَكَرِ (that is, stoning to death, for the married and lashing for the unmarried.) (al-Bukhari, Kitab al-Tafsir, v.2, p. 657)

This "way" stands proved through clear statements of the Holy Prophet صلى الله عليه وسلم himself where the relevant injunctions for the married and the unmarried have been described separately. The Holy Prophet صلى الله عليه وسلم had pronounced the *Hadd* punishment of *zina* in the case of Sayyidna Ma'iz ibn Malik رضي الله عنه, and a woman from the tribe of Azd. Since both of them were married, they were stoned to death. In addition to that, a couple from among the Jews of Madinah was also stoned to death because of *zina* and this judgment against them was pronounced on the authority of an injunction of Torah.

The injunction relating to the unmarried offender is mentioned in Surah al-Nur of the Holy Qur'an itself:

الَّزَّانِيْهُ وَالَّزَّانِيْ فَاجْلِدُوْا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةً جَلْدَهُ

(The fornicator, woman or man, administer each one of them - a hundred lashes.) - (24:2)

A verse of the Holy Qur'an was also revealed earlier to cover the injunction of *rajm* (stoning to death), but its recitation was later on abrogated. However, the injunction itself was retained as operative.

Sayyidna 'Umar رضي الله عنه has said:

إِنَّ اللَّهَ بَعَثَ مُحَمَّدًا بِالْحَقِّ وَأَنْزَلَ عَلَيْهِ الْكِتَابَ فَكَانَ مِمَّا أَنْزَلَ اللَّهُ تَعَالَى إِيمَانَ الرَّسُولِ رَحْمَةً رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَرَحْمَنَا بَعْدَهُ وَالرَّجُمُ فِي كِتَابِ اللَّهِ حَقٌّ عَلَى مَنْ زَنَى إِذَا أَخْصَنَ مِنَ الرِّجَالِ وَالنِّسَاءِ (بخاري و مسلم - مشكوة ص

(۴۰۹)

(Surely, Allah sent Muhammad ﷺ with the truth and sent down to him the Book. Then, in what was revealed by Allah Almighty there was the verse of *Rajm*. The Holy Prophet ﷺ stoned and we stoned after him and the revealed injunction of *Rajm* stands proved against every one who commits *zina* despite being married, whether man or woman.) (al-Bukhārī, Muslim, as in Mishkāt, p. 309)

To sum up, the injunction of 'torturing' and 'confining to homes' which appears in these verses was abrogated after the subsequent revelation of the legal *Hadd* punishment of *zina*, that is, one hundred lashes or *Rajm* will be mandatory. More details in this connection will, God willing, appear in the commentary on Surah al-Nur

Homosexuality

The above discussion was based on the assumptions that both verses 15 and 16 relate to the fornication or adultery committed between men and women. However, some commentators of the Holy Qur'an, including Qādi Thānāullah Pānipatī, are of the view that verse 16 refers to homosexual act committed between two males. Verse 16 is translated as follows:

"And those two of you who commit it (the shameful act), torture them both".

Here the Arabic word used for 'those two of you' is a masculine pronoun which presumes males on both sides. On this basis, these

commentators have opined that this verse relates to two males committing unnatural shameful act, i.e. homosexuality. The commentators, who take both verses as referring to fornication or adultery, refute this argument on the principle that in general usage masculine expressions include feminine also. Be that as it may, the possibility of a reference to homosexuality in this verse cannot be ruled out. Therefore, it is pertinent here to give some details about the severe prohibition of homosexuality. Here are some Traditions of the Holy Prophet صلى الله عليه وسلم and his noble Companions on this subject:

عن أبي هريرة رضي الله عنه أن رسول الله صلى الله عليه وسلم قال: لعن الله سبعة من خلقه من فوق سبع سموته وردّ اللعنة على واحد منهم ثلاثة ولعن كل واحد منهم لعنة تكفيه، قال: ملعون من عمل عمل قوم لوط، ملعون من عمل قوم لوط، ملعون من عمل قوم لوط . (الحديث)

As narrated by Sayyidnā Abū Hurairah رضي الله عنه , the Holy Prophet صلى الله عليه وسلم said: "Allah has cursed seven types of his creatures from above the seven heavens. He has cursed one of them thrice, while has cursed the others one time which is enough for them. (About the one whom He has cursed thrice) He has said, "Cursed is he who did what the people of Lot did. Cursed is he who did what the people of Lot did. Cursed is he who did what the people of Lot did." (At-Targhib wat-Tarhib)

وعن أبي هريرة رضي الله عنه عن النبي صلى الله عليه وسلم قال: أربعة يصيرون في غضب الله ويمسون في سخط الله، قلت: من هم يا رسول الله؟ قال: المتشبهون من الرجال بالنساء والمتشبهات من النساء بالرجال، والذى يأتي البهيمة، والذى يأتي الرجال .

Sayyidnā Abū Hurairah رضي الله عنه reports that the Holy Prophet صلى الله عليه وسلم said: "Four types of people are, when they begin their day, under the wrath of Allah and when they reach their evenings they are under the rage of Allah." I asked: "Who are they, O Messenger of Allah?" He said: "Men who imitate women and women who imitate men and he who goes unto animals and he who goes unto men". (op. cit.)

وعن ابن عباس رضي الله عنهما قال: قال رسول الله صلى الله عليه وسلم : من وجدتوه يعمل عمل قوم لوط فاقتلاوا الفاعل والمفعول به .

As narrated by Sayyidna Ibn 'Abbas رضي الله عنهما , the Holy Prophet صلى الله عليه وسلم said: "If you find someone doing what the people of Lot did, kill both the doer and the one with whom it is done. (op. cit.)

In At-Targhib wat-Tarhib cited above, Hafiz Zaki al-Din has said that four caliphs, Sayyidna Abū Bakr, Sayyidna 'Alī, Sayyidna 'Abdullāh ibn Zubayr and Hishām ibn 'Abdul-Malik حفظهم الله تعالى , had condemned those guilty of sodomy to the fire. In this connection, he has also related, on the authority of Muhammād ibn Al-Munkadir, an event to the effect that Sayyidna Khālid ibn Walīd رضي الله عنه wrote a letter to Sayyidna Abū Bakr رضي الله عنه reporting that there was a man in a certain Arabian locality with whom they did what is done with women. Sayyidna Abū Bakr رضي الله عنه called a meeting of the noble Companions, - Sayyidna 'Alī رضي الله عنه being one of them. He said that a sin like that was not committed by any human group except one, and they all knew how Allah Almighty dealt with those people. He proposed that the man be condemned to fire. Other Companions concurred and Sayyidna Abū Bakr رضي الله عنه decreed accordingly.

In the *Hadīth* narrations quoted above, the act of the people of Lūt has been repeatedly mentioned. The reference is to the people to whom Sayyidna Lūt عليه السلام (Lot) was sent as their prophet. Apart from their disbelief in the Divine Message and the Messenger, and their ascribing all sorts of partners to Allah, they were also addicted to this abominably unnatural practice. When the preachings and teachings of Sayyidna Lūt عليه السلام had no effect on them, the angels acted as commanded by Allah Almighty. They physically lifted the habitations of these people off the ground, then a flip upside down, and down they threw the whole thing back on the ground. Details will, *Inshāllāh*, appear in the Commentary on Surah al-A'rāf.

The *hadīth* narrations given above related to homosexual act. There are other narrations which carry the severest of warnings against indulging in the unnatural act (anal intercourse) with women:

عن ابن عباس رضي الله عنهما أن رسول الله صلى الله عليه وسلم قال:
لَا ينْظُرَ اللَّهُ عَزَّ وَجَلَّ إِلَى رَجُلٍ أَتَى رَجُلًا أَوْ امْرَأَةً فِي دَبْرِهَا

Sayyidna Ibn 'Abbas رضي الله عنه narrates that the Holy Prophet

sayidna said: "Allah Almighty does not look (mercifully) at the man who commits anal intercourse with a man or woman."

عن خزيمة بن ثابت قال: قال رسول الله صلى الله عليه وسلم: إن الله لا يستحب من الحق، ثلاث مرات، لا تأتوا النساء في أدبارهن

Sayyidna Khuzaimah ibn Thabit رضي الله عنه says that the Holy Prophet said : Allah does not get embarrassed by stating the truth. He said this thrice. Then, he said: "Do not go unto women anally."

وعن أبي هريرة رضي الله عنه أن رسول الله صلى الله عليه وسلم قال: ملعون من أتى امرأة في دبرها

Sayyidna Abū Hurairah رضي الله عنه narrates that the Holy Prophet said: "Cursed is he who goes unto women anally." (At-Targhib wat-Tarhib)

وعنه أن رسول الله صلى الله عليه وسلم قال: من أتى حائضاً أو امرأة في دبرها أو كاهناً فصدقه، فقد كفر بما انزل على محمد صلى الله عليه وسلم.

He also narrates that the Holy Prophet said: "One who goes unto a woman in menstruation, or in her anus or goes to a soothsayer (*kāhin*) and accepts his statement relating to the unknown, then, such people have rejected what was revealed to Muhammad صلى الله عليه وسلم."

As for a fixed punishment for this evil act, there is a difference of opinion among Muslim jurists, details of which are available in books of *Fiqh*. Nevertheless, the nature of such punishments reported by them is as severe as it can be, such as, burning into fire, bashing under a wall felled over, throwing down from a height, stoning and beheading with a sword.

Verses 17 - 18

إِنَّمَا التَّوْبَةُ عَلَى اللَّهِ لِلَّذِينَ يَعْمَلُونَ السُّوءَ بِجَهَالَةٍ ثُمَّ يَتُوبُونَ مِنْ قَرِيبٍ فَأُولَئِكَ يَتُوبُ اللَّهُ عَلَيْهِمْ وَكَانَ اللَّهُ عَلَيْهِمَا حَكِيمًا (١٧) وَلَيَسْتَ إِنَّمَا التَّوْبَةُ لِلَّذِينَ يَعْمَلُونَ السَّيِّئَاتِ

حَتَّىٰ إِذَا حَضَرَ أَحَدُهُمُ الْمَوْتَ قَالَ إِنِّي تُبْتُ الشَّرَّ وَلَا الَّذِينَ
يَمْوِتونَ وَهُمْ كُفَّارٌ أُولَئِكَ أَعْنَدْنَا لَهُمْ عَذَابًا أَلِيمًا ﴿١٨﴾

The relenting taken by Allah upon Himself if for those who do evil in ignorance then repent shortly thereafter. So, Allah relents towards them. And Allah is All-Knowing, All-Wise. [17]

And the relenting is not for those who do the evil deeds until when the time of death approaches one of them, he says, "Now I repent", nor for those who die while they are still disbelievers. For them We have prepared a painful punishment. [18]

Repentance was mentioned in the previous verse. Now, given in the present two verses are conditions under which repentance is or is not accepted.

Commentary

Repentance from a deliberate sin

At this point, it should be noted that the Holy Qur'an has used the words "in ignorance" which apparently gives an impression that the repentance may be accepted when a sin is committed unintentionally and unknowingly. But if it is committed deliberately, it will not be acceptable. However, according to the explanation of this verse given by the noble Companions, may Allah be pleased with them all, the word, "jahālah" (ignorance) here does not mean that a sinning person is not aware of a sin as sin, or has no intention or volition to commit a sin. Instead, it means that it was the insensitivity and heedlessness of a person towards the evil end of sin and its ultimate punishment which became the cause of his audacity to venture into sin, even though he knew a sin as sin, and had approached it with intention and volition as well.

In other words, the word, "jahālah" or ignorance used here is in the sense of carelessness or stupidity. This is supported by an evidence in Surah Yusuf. Sayyidna Yusuf (عليه السلام) had said to his brothers: هُنَّ عَلَيْنَا مَا فَعَلْنَا بِيَوْمٍ يَوْمٌ وَأَخْبِرْنَاهُمْ جَاهِلُونَ Here the brothers have been called, "jahilun", the ignorant ones, although what they did was not the outcome of any error or forgetfulness but they had done that know-

ingly and with full deliberation. Yet, it is because of their heedlessness towards the evil end of their act that they have been called "*jāhil*" (ignorant).

Abū al-Āliyah and Qatādah report that the noble Companions, may Allah be pleased with them all, agreed that كل ذنب اصحابه عبد فهو جهالة عما كان , that is, 'any sin committed by a servant of Allah is, anyway, an act of ignorance, be it deliberate or otherwise.'

كل عامل بعصية الله فهو جاهل حين عملها The master of exegesis, Mujāhid said: "Every one who is doing anything in disobedience to Allah is, for that matter, ignorant while doing it," even though, on the outside, he may appear to be a person of great learning. (Ibn Kathīr)

In his *Tafsīr*, al-Bahr al-Muhiṭ, Abū Ḥayyān has said: "This is just like what has been reported in a *hadīth* - لا يزني الزانى وهو مؤمن , that is, 'a person who commits *zīnā* (adultery) will not be doing so while in a state of being a true Muslim.' It means that the time when he succumbed to the temptation of this evil act, that was the time when he was flung far off from the demand of his faith. For this reason, Sayyidna Ikrimah said : امور الدنيا كلها جهالة , that is, 'everything one does in this mortal world - outside the framework of obedience to Allah - is ignorance.' The logic is very obvious since the person disobeying Allah is preferring short-lived pleasures over those ever-lasting; and, anyone who takes the punishment which will last for ever and ever in exchange for this short-lived series of pleasures cannot be called rational, sensible or smart. Such a person would be universally termed as ignorant, even if he knows the evil of his act and has all the intention and resolve to go ahead with it.

The gist of the discussion so far is that the sin that a man commits, deliberately or mistakenly, gets committed due to nothing but '*jihālat*' or ignorance. Therefore, there is a consensus of the entire Muslim *ummah* on the principle that the repentance of a person who commits some sin deliberately can also be accepted. (al-Bahr al-Muhiṭ)

Incidentally, there is another point worth attention in the present verse which prescribes a condition for the acceptance of repentance - that one should repent soon without delaying it. The Qur'anic words are: "Shortly thereafter." What does "shortly" signify and how much

time will come within the limit of "shortly"? The Holy Prophet ﷺ has himself explained this in a *hadīth* in the following words: إِنَّ اللَّهَ يَعْلَمُ مُؤْمِنَةً . الْمُبْتَدِئَ مَا لَمْ يَعْرِفْ عِزَّةً The *hadīth* means that Allah Almighty accepts the repentance of His servant until the time he passes into the throes of death and his soul struggles to get out of his rattling throat.

Muhaddith Ibn Marduwayh has narrated from Sayyidna 'Abdullah ibn 'Umar رضي الله عنه that he heard the Holy Prophet ﷺ saying: 'A believing servant of Allah who repents from his sin a month before his death, or repents a day or a moment earlier, Allah Almighty shall accept his repentance, the condition being that the repentance should be genuine and sincere. (Ibn Kathir)

In short, the explanation of "*min qarīb*" (shortly thereafter) given by the Holy Prophet ﷺ himself tells us that virtually man's whole life-time comes under "*qarīb*" and, as such, any repentance which is offered well before death shall be acceptable. However, the repentance made by man while in throes of death is not acceptable. Maulānā Ashraf 'Alī Thānawī in his *Tafsīr Bayān al-Qur'ān*, has elaborated the subject by saying that man faces two conditions when close to death. Firstly, there is the condition of utter hopelessness when all medicines and efforts fail and man comes to realize that death is round the corner. This is known as the state of "بَأْسٍ" i.e., conscious suffering. The second condition relates to what comes after, that is, when the pangs of the departure of human soul begin and the fated time of *ghargharah* (the onomatopoetic rattling sound emerging from the throat, a herald of approaching death) comes close. This is known as the state of بَأْسٍ يَاسِنٍ i.e., total despair. The first condition, that is, the condition of conscious suffering comes within the sense of "*min qarīb*" and the repentance made at that time is accepted; but, the repentance in the second condition, that is, the condition of total despair, is not acceptable, for this is a condition when the angels and things belonging to the Hereafter may start appearing before the dying person, and they are not included in the sense of "*min qarīb*".

This explanation given by the Holy Prophet ﷺ has been pointed out by the Holy Qur'ān itself in the following verse (i.e. verse 18) where it is expressly mentioned that repenting, after the sure signs of death are visible, is not accepted.

So, in the light of this explanation the addition of "*min qarīb*" (shortly thereafter) in this verse serves to indicate that the very life-span of man is limited in time, and death, which he may think is far away, may actually be quite near.

"Relenting taken by Allah upon Himself" is a form of promise the fulfillment of which is certain. Otherwise the truth is that Allah Almighty does not necessarily owe anything to anyone.

The second verse (18) describes those whose repentance is not acceptable with Allah, those who fearlessly go on committing sins throughout their entire lives yet, when death stands on their head and the withdrawal of their soul is set in motion and the angels of death start becoming visible, they start offering repentance. How could their repentance become acceptable when they kept running wild with their lives and wasted all opportunities of repenting while there was still time to repent. This is very much like Pharaoh and his people who called out while drowning that they were ready to believe in the Lord of *Musā* (Moses) and *Harūn* (Aaron). Naturally, they were told that their declaration of faith at that time was of no consequence, because the time set for it was all over.

The same thing has been pointed out in the last sentence of the verse which says that Allah also does not accept the repentance of those who die while they are still disbelievers. What is the worth of a declaration of faith right in the middle of one's match with death facing the pangs of the withdrawal of the soul from the body? This confession or this declaration of faith is out of tune with the time and quite worthless now as their punishment stands prepared for them.

What is repentance?

After the literal explanation of these two verses, it seems necessary to define *Taubah* or repentance and determine its real nature and status. In his '*Iḥyā' al-'Ulūm*', Imām al-Ghazālī has identified three different situations with regard to committing sins:

The first state is that of total sinlessness, that is, no sin has ever been committed. This is either the hallmark of angels or that of the prophets, may peace be on them. The second stage of getting involved in sin comes when one takes the initiative and ventures into sin and then repeats and persists with it, never feeling ashamed or regretful

and never thinking of stopping and abandoning it. This is the degree of the satans and the devils. The third station belongs to human beings, the children of Adam who, immediately after having committed a sin, regret it and resolve firmly not to go near it in future.

This tells us that failing to repent after committing a sin is the style of devils exclusively. Therefore, it is the consensus of the entire Muslim *ummah* that *Taubah* is obligatory. The Holy Qur'an says:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذْ تَرَوْهُمْ نَصْوَحًا عَسَىٰ رَبُّكُمْ أَنْ يُكَفِّرَ عَنْكُمْ
سَيِّئَاتِكُمْ وَمَدْخَلَكُمْ جَنَّتٍ تَخْرُجُ مِنْهَا الْأَنْعَوْنُ

(O those who believe, repent before Allah, a sincere repentance; may be your Lord removes from you your sins and admits you to gardens beneath which rivers flow.) (66:8)

How generous is the mercy of our Lord! A man spends a whole life-time in disobeying Him. Nevertheless, when he repents sincerely before his death, not only his sins are forgiven, but he receives much more when he is admitted into the circle of favoured servants of Allah and made an inheritor of Paradise.

In a *hadīth*, the Holy Prophet ﷺ has been reported to have said: أَتَائِبُ كَيْبِي اللَّهُ وَالثَّانِي بِمِنَ الدَّنَبِ كَمْ لَذَّبَ لَهُ that is, 'one who repents from sin is loved by Allah and one who has repented from sin is like one who had never committed a sin.' (Ibn Majah)

According to some narrations, if a servant of Allah repents from a sin and his repentance finds acceptance with Him, he is not only absolved from having to account for it, but the very record in writing posted by the angels is erased out from his book of deeds so that he may not be disgraced either.

However, what is necessary is that the repentance is genuine and is offered in sincerity. This repentance stands on three pillars. Firstly, one should regret over and feel ashamed about what he or she has done. According to *hadīth*, إِنَّ التَّوْبَةَ لِلَّهِ, that is, '*Taubah* is (another name of) remorse'. Secondly, one should immediately leave off the sin he has committed and he should, for the future too, firmly resolve to stay away from it. Thirdly, one should think of making amends for what has gone by, that is, he should try to take measures to rectify what

has happened in sin to the best of his ability. For example, if he has missed a prayer or a fast, he should make up for it by doing what is known as *qadā* (compensatory worship). If one does not remember the correct number of such missed prayers and fasts, he should think, calculate and come to an estimated number and then go on to offer *qadā* for these in all seriousness. If one finds it impossible to do so all at one time, he could offer, with each *salāh* due at its time, one *qadā* of each *salāh* he missed throughout his life, which is commonly known as '*umri qadā*'. In the same way, one should do his best to make up, as and when convenient, for obligatory fasts he missed by offering *qadā* fasts. May be one has not paid the obligatory *zakāh* due on him; he should, then pay the *zakāh* due on him for previous years as well, paying it all or paying it gradually. God forbid, if one has usurped someone's right, he should return it back to him and if he has hurt someone, he should seek his forgiveness. But, should it be that one does not regret what he has done, or, despite being regretful, he does not leave off that sin for future, then, this repentance is no repentance even though it may be said a thousand times, as so delightfully put in verse by a Persian poet:

توبه بر لب سبحة بر کف دل پُر از ذوق گناه
معصیت راخنده می آید از استغفار ما
Repentance on the lips, rosary in hand
and a heart full of the taste of sin
Sin laughs at my style of seeking forgiveness!

The point being made here is that man, once he repents as stated earlier, and despite having been in all sorts of sins, becomes a servant dear to Allah. And should it ever be that, out of human weakness, one does fall into sin yet another time, he should immediately renew his repentance in the fond hope that this time, like every other time, Allah Almighty shall, being Most-Forgiving, relent towards him. Let me conclude with yet another Persian couplet which says:

این درگه ما در گه نومیدی نیست صد بار اگر توبه شکستی باز آ
This is the Court of My Presence,
not the Court of Despair.
Even if you have broken (the promise in) your repentance
a hundred times, come again!

Verses 19 - 21

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرْشُو النِّسَاءَ كَرْهًا وَلَا
تَعْضُلُوهُنَّ لِتَذَهَّبُوا بِعَيْنِيهِنَّ مَا أَتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِيَنَّ
بِفَاحِشَةٍ مُّبَيِّنَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرْهُتُمُوهُنَّ
فَعَسَى أَنْ تَكْرَهُوْا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا ﴿١٩﴾
وَإِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجَ مَكَانَ زَوْجٍ وَآتِيْتُمْ إِلَهُنَّ قُنْطَارًا
فَلَا تَأْخُذُوْا مِنْهُ شَيْئًا إِنَّا تَعْذُونَهُ بُهْتَانًا وَإِنَّمَا مُّبَيِّنًا ﴿٢٠﴾
وَكَيْفَ تَأْخُذُوْنَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ وَأَخَذْنَ مِنْكُمْ
مِّيْنَاقًا غَلِيظًا ﴿٢١﴾

O those who believe, it is not lawful for you that you should forcibly take women as inheritance. And do not hold on to them so that you may get away with some of what you have given them, unless they commit a clearly shameful act. And live with them in the recognized manner. And if you dislike them, then it is quite likely that you dislike something and Allah has placed in it a lot of good. [19]

If you want to take a wife in place of the one (you have), and you have given her a lot, then do not take back anything from it through imputation and open sin? [20]

And how can you take it when you have had access to each other and they have taken a firm covenant from you. [21]

Sequence of verses

Repentance was mentioned in the previous verses in proportion to the related requirement of the text. Before this, there was a series of injunctions pertaining to women. The present verses too carry some more imperatives against the excesses suffered by women at the hands of their husbands, even heirs. Details appear in the Commentary.

The aim is to correct such social disorders. It may be noted that husbands have been particularly addressed in عَاشُوكُمْ (live with them).

Verses 20 and 21 conclude the subject.

Commentary

Women before Islam: Eradication of Injustices

Given in these three verses are steps taken to eliminate injustices to which women were commonly subjected:

1. The most glaring of these was that men used to act as owners of the life and property of women, so much so, that a woman taken in marriage was passed on as a piece of property after her husband's death, on to his heirs. They were considered as the new owners and inheritors of the property, plus the wife. They could, if they wished to, marry her or give her in marriage to somebody else against payment. The son of the husband from another wife could himself marry her after the death of his father. When a living human being has been taken as an article of ownership, what would have happened to the normal property is all too obvious. This one basic social ill became the cause of hundreds of other unjust practices against women, some of which are pointed out below:

(a) If a woman received some property in inheritance or some gift from her parents, the poor thing stayed deprived of it. Everything received in her name was devoured by men at her husband's home.

(b) If, somehow the woman did come in possession of her share of the property, men would prevent her from remarrying so that she could not take her share out of the house - they wanted her to die right there where she was, leaving her property which they could possess after her.

(c) In some places there was the practice that if the husband did not like his wife because of whimsical factors and not because of any shortcoming of the wife, then, while he skipped relating to her as his wife, did not get rid of her by giving her a divorce. This was to harass her to the limit that she was forced to give him back the jewellery and dower money he had given her; or, if he had not yet given these as due, he expected that she would forgo her claim before she could hope to be released. There were situations when the husband, despite having divorced her would not let the divorced wife remarry so that she breaks up and returns to him the amount of dower he had given her,

or forgoes the dower still unpaid.

(d) On occasions, following the death of her husband, his heirs would not let the widow remarry. They would do so either to satisfy their false sense of prestige, or to let her go only after they get something for themselves in the deal.

As said earlier, all these injustices were perpetrated on the basis of the central assumption that man owned not only the property but also the very life of the woman. The Holy Qur'an struck at the very root of this evil which produced other injustices and openly declared:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرْثُوا النِّسَاءَ كَمَا
كُرِهْتُمُوهَا

O those who believe, it is not lawful for you that you should forcibly take women as inheritance.

The word "forcibly" does not appear here as a condition which would have given the impression that their becoming owners of women with the later's approval was all right, but this restriction has been introduced here as a statement of fact. It means that taking over the charge of the life and property of women as self-appointed owners without any legal or rational basis whatsoever could, obviously, be only "forcibly". How could a woman, in her normal senses, ever agree to such a proposition? (al-Bahr al-Muhit). This is why the Shari'ah of Islam does not accept her approval in this matter as effective. If any woman, so out of her mind, approves of being owned by somebody, the Islamic law is not willing to concede this position.

The common method of preventing injustice and disorder would be to use a prohibitive order, but the Holy Qur'an has avoided this common method at this place and has expressed the element of prohibition by negating the lawfulness of this act by saying: لَا يَحِلُّ لَكُمْ 'it is not lawful for you'. Here, in addition to stressing upon the severe sinfulness of this matter, the purpose may also be to indicate that, should it be that someone does go on to marry an adult woman without her consent and permission, the marriage thus entered into shall not be lawful and, in fact, it is null and void. Being totally *non-sequitur*, no husband-wife relationship between the man and woman gets established from such a marriage, nor do the injunctions of inheritance or lineage follow from it.

Similarly, if someone forces a woman and takes back the dower he had given her, or compels her to forgo the outstanding dower, this forced return or forgiveness is not valid in the sight of the Sharī'ah. Money or property taken in this manner do not make them lawful for the man, nor does it cause any due right to be forgiven. This subject has been further clarified in:

It means: 'Do not prevent women from marrying at their choice with the intention of taking back what you, or a relative, have already given to them as dower or gift.' So, the giving and the taking back of dower is inclusive of the incidence of making the woman forgive the dower the payment of which is due, fixed and agreed upon. Whether one forces the woman to return the dower amount already paid or forces her to forgo the dower still outstanding, both are impermissible and patently *harām* (forbidden). Similarly, whatever has been given to the wife as gift, or something of which she has become the 'owner', cannot be taken back by the husband, or the heirs, for it is not lawful for them to do so. However, this rule applies only to a situation where anything has been assigned to her as an owner. If something was given to her for a temporary use, like jewellery or any other article, not making her the owner of it, then, that simply does not enter into the 'ownership' of the wife and, therefore, asking for their return is not forbidden.

The text, after that, by saying: إِلَّا أَنْ تَأْتِيَنَّ بِفَاحِشَةٍ مُّبِينَ exempts some such situations under which it becomes permissible for the husband to take back what he has given, including the dower. It means that should the woman commit an act which is clearly shameful and which naturally compels the man to divorce her, then, this will be a situation in which it does not matter if the husband holds back the word of divorce until such time that the woman returns the dower he had given her or forgoes the outstanding dower, if that is the case.

According to Sayyidna Ibn 'Abbas رضى الله عنه, Sayyidah 'Ā'ishah رضى الله عنها and Hadrat Dāḥḥāk رحمه الله عنها and others, the word, "fāhisha" (translated as 'a shameful act') here means disobedience to the husband and indecent abuses against him; while, Abū Qilābah and Hasan al-Baṣrī رحمه الله take it to mean immodesty and adultery in this particular place. Thus, the sense would come to be: If these women

happen to commit some shameful act or they behave disobediently and vituperatively which forces the husband to think of a divorce, then, this being a fault of the woman, the husband has the right to hold her in the bond of marriage, until he receives back what he had given her, or has the outstanding dower forgiven by her.

The next two verses (20, 21) also enlarge upon this subject. Here it has been said that, should it be that the woman has just not shown any contumacy or immodesty, but the husband, following his own physical desire and pleasure, intends to marry another woman in her place, then again it will not be permissible for him to claim anything from her in exchange of divorce, even though he had given her a lot of wealth. Similarly, it will not be allowed for him to force her to forgo the dower due against him. This is because there is no fault of the woman and the cause which makes the dower due and payable has been vacated, that is, they have been married and have had their privacy with each other. Now, the husband has no right to take back what he has given her or make her forgo the dower.

That the taking back of this amount is an injustice and sin has been later on described in three stages.

First, it was said: *أَتَخْدُونَهُ بِهَنَّا وَإِنْ شَيْئًا* that is, 'do you want to take it through imputation and an open sin?"

This sentence refers back to the previous verse (19) where it was laid down that the husband has no right to take back the dower from his wife except when she has committed a shameful act. On the basis of this principle the present verse (20) says that if you take back the dower from your wife, it will mean that you are imputing her for a shameful act, because it is the only situation where your claim may be rightful. Since your wife has not committed a shameful act, your claim to the dower is a false imputation which is an open sin.

Secondly, in the following sentence in verse 21, it was said: *وَكَيْنَتْ* *تَخْدُونَهُ وَقَدْ أَنْصَى بَعْضَكُمْ إِلَى بَعْضٍ* that is, how can you now take back what you had given her when not only the marriage has been solemnized, but you have also had access to each other in privacy? For, in this situation, whatever has been given, if against dower, the woman certainly deserved it. She now owns it because she surrendered herself to her

husband. The idea that it could be returned is senseless. Even if this money or property given by the husband was presented or gifted, even then, it is not possible that it could be returned because what a husband and wife give to each other as gift cannot be taken back. Such claim of its return is neither permissible in Shari'ah, nor is it legally enforced. So, marital bond prevents the taking back of what has been given as gift.

The same subject has been stated in the last sentence of verse 21: (and they have taken a firm covenant from you). This 'covenant' is the bond of marriage which is solemnly attested to with the name of Allah before a gathering of people following a *khuṭbah*.

To sum up, once this marital covenant has been made and mutual privacy has brought the couple close together, to force the woman to return what was given to her is open injustice and tyranny. All Muslims must abstain from it.

Verses 22 - 24

وَلَا تُنْكِحُوا مَا نَكَحَ أَبْيَاكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ ۖ إِنَّهُ
 كَانَ فَاحِشَةً وَمُقْتَاطِعًا وَسَآءَ سَبِيلًا ۝ ۲۲﴾ حُرِّمَتْ عَلَيْكُمْ
 أُمَّهَتْكُمْ وَبَنِتُكُمْ وَأَخْوَتُكُمْ وَعَمْتُكُمْ وَخَلْتُكُمْ وَبَنْتُ الْأَخِ
 وَبَنْتُ الْأُخْتِ وَأُمَّهَتْكُمُ التِّي أَرْضَعْنَكُمْ وَأَخْوَتُكُمْ مِنَ
 الرَّضَاعَةِ وَأُمَّهَتْ نِسَائِكُمْ وَرَبَّاتِكُمُ التِّي فِي حُجُورِكُمْ مِنْ
 نِسَائِكُمُ التِّي دَخَلْتُمْ بِهِنَّ فَإِنَّ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا
 جَنَاحَ عَلَيْكُمْ وَحَالَتِلَّ أَبْنَائِكُمْ وَالَّذِينَ مِنْ أَصْلَابِكُمْ ۚ وَإِنْ
 تَجْمِعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ ۖ إِنَّ اللَّهَ كَانَ غَفُورًا
 رَّحِيمًا ۝ وَالْمُحْصَنَتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ
 كِتَبَ اللَّهُ عَلَيْكُمْ وَأَحِلَّ لَكُمْ مَأْوَرَاءَ ذَلِكُمْ أَنْ تَبْشَعُوا
 يَامَوْالَكُمْ مُحْصِنِينَ غَيْرَ مُسْفِحِينَ ۖ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ
 فَاتَّوْهُنَّ أُجُورُهُنَّ فَرِيضَةٌ ۖ وَلَا جَنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُمْ

بِهِ مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ عَلَيْمًا حَكِيمًا (٢٤)

And do not marry those of women whom your fathers had married except what has passed. It is indeed shameful and detestable, and it is an evil practice. [22]

Prohibited for you are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, daughters of brother, daughters of sister, your mothers who suckled you, your sisters through suckling, mothers of your wives and your step-daughters under your care who are born of your women with whom you have had intercourse - but if you have not had intercourse with them, then there is no sin on you. And the wives of your sons from your loins, and that you combine two sisters (in wedlock), except what has passed. Surely, Allah is Most-Forgiving, Very-Merciful.[23]

(And also prohibited are) the women already bound in marriage, except the bondwomen you come to own. It has been written by Allah for you. All except them have been permitted for you to seek (to marry) through your wealth, binding yourself, (in marriage) and not only for lust. So, whoever of them you have benefited from, give them their due as obligated. And there is no sin on you in what you mutually consent to after the (initial) settlement. Surely, Allah is All-Knowing, All-Wise. [24]

The present verses are an extension of the description of evil practices common in *Jahiliyyah* which have been taken up earlier. A detailed discussion appears in the Commentary.

Commentary:

These verses give details of *muharramat*, that is, women with whom marriage is prohibited. Some of them are prohibited for ever, never becoming lawful under any condition. Some are not permanently prohibited. They become lawful under some particular circumstances.

There are three kinds of permanently-prohibited women referred to in the first category. They are those by kinship, by fosterage and by relationship through marriage, and are permanently prohibited. The kind mentioned at the end remains prohibited until they are bound in marriage with someone else.

An explanation of the verses follows with relevant part of the verse appearing in the lead:

وَلَا تُنكِحُوا مَا نَكِحْتُ أَبَاؤكُمْ (And do not marry those of women whom your fathers had married) (verse 22): During the days of *Jahiliyyah*, people had no qualms when they went ahead and married the wife of their father after his death. In this verse, Allah Almighty has prohibited this shameful practice; an evil which invites His wrath. How can someone keep calling a woman his mother for a long time and yet stoop so low as to make her his wife after the death of the father?

Ruling:

1. Marrying the legally wedded wife of the father has been declared unlawful in this noble verse. There is no restriction here to indicate marital consummation by the father. So, the fact that the father has married a woman is enough to forbid the son from entering into marriage with that woman. It will never be lawful. Similarly, it is not correct for the father to marry the wife of his son, even if the marriage of the son is limited to formal '*nikāh*' and his wife has not yet come to live with him. (Ibn 'Abidin)

2. If the father has fallen into illicit relations with some woman, even then it will not be permissible for the son to marry that woman.

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ (Prohibited for you are your mothers): It means that it is unlawful to marry one's own mother and the word, "*ummahatukum*" (your mothers), includes all grandmothers, paternal or maternal.

وَنِسَّتُكُمْ (and your daughters) means that it is unlawful to marry one's own real daughter, and the daughter of the daughter, and the daughter of the son.

In short, marrying a daughter, grand-daughter, great-grand-daughter; maternal grand-daughter, great-grand-daughter is all unlawful. As for marrying a step-daughter, from a different husband, whom the wife has brought with her, there are details which will appear later. As regards the son or daughter who are not real but have been adopted, it is permissible to marry them or their offspring, subject to the provision that such marriage is not unlawful due to some other consideration. Similarly, if a person fathers a daughter by

indulging in *zīnā* with a woman, the girl thus born will be governed by the rule which applies to a daughter and marriage with her too will not be correct.

وَأَخْوَتُكُمْ (and your sisters): Marrying one's own real sister is unlawful, as well as marrying an '*allātī*' sister (half-sister from the same father but different mother), and also marrying an *akhyāfī* sister (half-sister from the same mother but different father).

وَعَنْتُكُمْ (and your paternal aunts): Marriage with the real sister of one's father, his half-sister from their father's side and his half-sister from their mother's side is unlawful. It means that one cannot marry any paternal aunt from the three kinds described above.

وَخَلْتُكُمْ (and your maternal aunts): Marriage with a sister of one's mother, whether real (*haqīqī*) or half-sister from their father's side ('*allātī*) or half-sister from their mother's side (*akhyāfī*), is unlawful.

وَبَنْتُكُمْ أَخْجَ (and daughters of brother): It means that marriage with one's nieces is also unlawful, whether they be *haqīqī*, '*allātī* or *akhyāfī*. Marriage with the daughters of all three types of brothers, real or half, as given above, is not lawful.

وَبَنْتُكُمْ أُخْرَجَ (and daughters of sister): It means that marriage with one's maternal nieces is also unlawful, whether the sisters be *haqīqī* or '*allātī* or *akhyāfī*. The daughters of such sisters cannot be taken in marriage.

وَأَمْهَنْتُكُمُ الَّتِي أَرْضَعْنَاكُمْ (and your mothers who suckled you): This refers to women who, even though they are not the real mothers, are treated in Shari'ah like mothers in the sense that marriage with them is as prohibited as with one's real mother. The quantity or the frequency of feed makes no difference; the said unlawfulness stands established under all eventualities. Muslim jurists refer to this as the unlawfulness through fosterage.

However, it is necessary to remember that this unlawfulness through fosterage gets established when suckling takes place at a time which is the usual time for it during childhood. The Holy Prophet ﷺ has said: "إِنَّ الرَّضَاعَةَ مِنَ الْمُحَاجَعَةِ": Fosterage is only from hunger" which means that the unlawfulness that becomes established through sucking shall come into effect only when sucking has taken place at a

time when the child has no other option but to suckle and grow through it. (al-Bukhārī and Muslim)

According to Imām Abū Hanifah, this period ranges between the birth of the child and when he or she is two and a half years old. According to other Muslim jurists which includes his special disciples, Imām Abū Yūsuf and Imām Muḥammad رحمهما الله تعالى, the period of suckling is two years only, therefore, if a boy or girl suckles at the breast of a woman after the age of two years, the prohibition of marriage due to fosterage will not come into affect.

(وَآخْرَتُمُوهُ مِنْ الرَّضَاعَةِ) (and your sisters through suckling): It means that marriage with sisters related through the bond of fosterage is also unlawful. Going in details, it works out that a woman who suckles a boy or girl during the days of suckling becomes their foster-mother, and her husband becomes their foster-father, and the offspring of that woman become his brothers and sisters, and the sisters of that woman become their maternal aunts, and the elder and younger brothers of her husband become the foster-uncles of these children, and the sisters of the husband of that woman become the paternal aunts of these children; and thus, in between all of them, the relationship of fosterage resulting in prohibition of marriage is established. The marriage which is mutually unlawful as based on the relation of kinship becomes equally unlawful as based on the relation of suckling. The Holy Prophet ﷺ has said: (يحرّم من الرضاعة ما يحرم من الولادة) (Bukhārī) (That which becomes unlawful by kinship becomes unlawful by fosterage). Another narration from the *Sahīh* of Muslim as in Mishkāt, page 273, says: (إِنَّ اللَّهَ حَرَمَ مِنَ الرِّضَاعَةِ مَا حَرَمَ مِنَ النِّسْبَةِ) (Surely, Allah has prohibited through fosterage what He has prohibited through kinship.)

Rulings:

1. If a boy and a girl were suckled by a certain woman, the two of them cannot be married to each other. Similarly, marriage with the daughter of a foster-brother and foster-sister is also not possible.
2. Marriage with the lineal mother of foster-brother and foster-sister is permissible. It is also lawful to marry the foster-mother of the lineal sister of foster-sister; and the foster-sister of the lineal sister.
3. The unlawfulness of marriage becomes established if the feed is

received by the child during the days of suckling either through the mouth, or the nose. Should it be that the feed is given to the child by any other inlet, or it is injected in, then, the unlawfulness of fosterage will not come to be established.

4. No feed other than the feed from the woman suckling the child (for example, milk from animals or male humans), establishes fosterage.

5. If the feed is mixed in medicine or in milk from a goat, cow or buffalo, the unlawfulness of marriage as based on suckling shall be established only when the quantity of the woman's feed measures more, or when it is at least equal. But, if the woman's feed is less than that, this unlawfulness shall not come to be established.

6. If male mammalian glands happen to lactate, it does not go on to prove the unlawfulness of marriage from suckling.

7. If a woman lets a child mouth her nipple, but there is no certainty that the child has sucked the feed in, then this will not establish the unlawfulness through suckling and it will not affect the lawfulness of marriage, because the prohibition of marriage is not established where actual suckling is doubtful.

8. If a man marries a certain woman while some other woman claims that she has suckled both of them, then, should both of them confirm it, it will be decided that the marriage was incorrect. However, should both of them reject the claim it will not be mandatory on the spouses to vacate the marriage, however, if the woman appears to be God-fearing and a practicing Muslim, it is preferable for the spouses to opt for separation through divorce.

9. The witness of two practicing Muslims is necessary in order to prove unlawfulness through suckling. This will not be proved by the witness of one man or one woman. But, since this is a very serious matter involving the whole life being *halal* or *haram* a precautionary attitude will always be advisable. Therefore, some Muslim jurists have ruled that if one intends to marry a woman, and only one practicing Muslim testifies that they are foster brother and sister, it will not be permissible for them to contract marriage. And if the evidence of one witness, male or female, comes forth after they have married each

other, even then, it will be safe and prudent for them to opt for voluntary separation.

10. According to the recognized rules of evidence, the testimony of one man and two women is equal to that of two male witnesses. Therefore, even if one man and two women testify the fact of suckling, the foster-relationship will stand proved.

وَأُمَّهُتْ بِنِسَانِكُمْ (and the mothers of your wives): Also unlawful to husbands are the mothers of their wives. Here too, the word, "ummahāt" includes all grandmothers of wives, maternal, paternal, lineal or foster.

Ruling:

1. Just as the mother of a legally wedded wife is unlawful, very similarly, equally unlawful is the mother of a woman with whom one has slept assuming her to be his wife, (while, in fact, she was not his wife) or with whom *zīnā* (adultery) has been committed, or who has been touched lustfully.

2. The initial bond or marriage, in itself, renders the mother of one's wife unlawful for him. It means that even if the husband has never slept with his wife, her mother is still unlawful for him to marry.

وَرِبَاتِكُمُ الَّتِي نَزَّلَتْ مِنْ زَسَانِكُمُ الَّتِي دَخَلْتُمْ بِهَا (and your step-daughters under your care who are born of your women with whom you have had intercourse): When one marries a woman and sleeps with her after the marriage, the daughter of that woman from another husband becomes unlawful for him, and so do her grand-daughters, both paternal and maternal. Marriage with them is not permissible. But, if the husband has not yet slept with his wife and has divorced her after the contract of marriage, then her daughter or grand-daughter will not be unlawful for him. But, following *nikāh*, if one touches his wife lustfully, or looks at her private part with sexual desire, then this too, will be taken as having sex with her, therefore, it will make the daughter of that woman unlawful.

The words "your women" used in this context are general. Therefore, it is not the legally wedded wife only whose daughters are unlawful for the husband, but the same rule applies to a woman who

is not really wedded to the person, but he has had sexual intercourse with her either under the wrong impression that she is his wife, or in adultery. The daughter and grand-daughter of such women will also become unlawful for him.

وَحَالِيلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ (and the wives of your sons from your loins): The wife of one's own son is unlawful, and the universality of 'son' includes grandsons, paternal or maternal. So, marriage with their wives shall not be permissible.

مِنْ أَصْلَابِكُمْ (from your loins): This particular restriction is used here to exclude the adopted son. Marriage with his wife is lawful. As far as a foster son is concerned, he is governed by the rule which governs the lineal son, therefore, marriage with his wife too is unlawful.

وَأَنْ تَجْعَلُوا بَيْنَ الْأُخْتَيْنِ (and that you combine two sisters in wedlock): Also unlawful is the combining of two sisters in the bond of marriage. They may be real sisters or half sisters from the father's side or sisters from the mother's side (*haqiqi*, *'allati*, *akhyaifi*). They may be sisters by lineage or sisters by fosterage. This rule covers all of them. However, when one sister has been divorced it is permissible to marry another sister, but this permissibility becomes effective only after the period of '*iddah*' has expired. Marriage during '*iddah*' is not permissible.

Rulings:

1. Just as one cannot combine two sisters in his marriage, it is also unlawful for him to combine a paternal aunt and her niece, and a maternal aunt and her niece. They too cannot be combined in marriage with any one person. As reported in al-Bukhari and Muslim, the Holy Prophet ﷺ has said:

لَا يُجْمِعُ بَيْنَ الْمُرْأَةِ وَعَمْتَهَا وَلَا بَيْنَ الْمُرْأَةِ وَخَالَتَهَا (بخاري و مسلم)

Do not combine a woman with her paternal aunt, nor a woman with her maternal aunt

2. Muslim jurists have mentioned the general principle that any two women, out of whom, if one was supposed to be a male, then, their marriage with each other would turn out to be incorrect according to Islamic law, thus two women of this kind cannot be combined in marriage with one man.

اَلَا مَا قَدْ سَلَفَ (except what has passed): It means that whatever has been the practice during *Jahiliyyah* will not be called to account. These words have also appeared in verse 22. There too, the meaning is the same, that is, that which came to pass during *Jahiliyyah* has passed. Now that Islam has been embraced, past deeds will not be taken into account, but it is necessary to abstain from them in future.

In the same way, it is necessary at this time of the revelation of what was unlawful that separation be made if one holds the wife of his father, or two sisters, in marriage. In the case of two sisters, it is compulsory that one sister be separated.

As narrated by the blessed Companion, Sayyidnā Barā , Ibn ‘Azib, the Holy Prophet ﷺ had sent Sayyidnā Abū Burdah ibn Niyar to execute a man because he had married the wife of his father. (Mishkāt, p. 274)

Ibn Firoz Dailami narrates from his father: 'When I embraced Islam, I had two sisters married to me. I went to the Holy Prophet ﷺ with the problem.' He said: "Separate by divorcing one and keeping the other." (Mishkāt, p. 274)

These narrations tell us that just as it is not lawful, after embracing Islam, to contract marriage with father's wife or to combine two sisters in marriage, similarly it is also unlawful to maintain such marriages, if they have been contracted by someone before he embraced Islam.

إِنَّ اللَّهَ كَانَ غَفُورًا رَّحِيمًا (Surely, Allah is Most-Forgiving, Very-Merciful) means that anything people did erroneously before the advent of Islam will be overlooked by Allah Almighty once they have embraced Islam and they can be sure that He will turn to them with the great reach of His mercy.

وَالْمُحَصَّنَاتُ مِنِ النِّسَاءِ (the women already bound in marriage): It means that women having husbands have also been made unlawful. So far as a woman is married to a person, no other person can marry her. From here, it becomes very clear that a woman cannot live with more than one husband simultaneously. There are some ignorant and loud-mouthed people in our time who have started saying - when men are allowed to take more than one wife, women too should have the

permission to enjoy more than one husband. This tasteless bravado is totally contrary to this noble verse. People who indulge in such fliprant display of ignorance do not see that plurality of wives is a blessing which has been historically endorsed in all religions and societies. But, for a woman, having more than one husband at the same time is not only a headache for her in person, but it is also disgraceful for those two men who become husbands to one woman. This weird arrangement is not only shameless, but also leaves no possibility of any offspring being born lineally sound. When many men benefit from one woman, there will remain no method of attributing the fatherhood of the child so born to any one of the participating husbands. Such an obnoxious demand can only be made by those who are totally hostile to the graces of humanity, those who have buried their sense of shame once and for all and those who are supporting the movement to deprive human beings of blessings that issue forth from the recognized channel of parents and children bound in a charter of mutual rights. When lineage goes unproved, who is going to be charged with the responsibility of taking care of mutual rights and duties?

Even if this is looked at purely in terms of nature and reason, there seems to be no justification for the provision of several husbands for one woman:

1. The basic purpose of marriage is procreation. Seen from this angle, several women can certainly become pregnant from one man, but one woman cannot become pregnant from several men. She will become pregnant from none but one. What has thus happened is that, given the presence of several husbands, the procreating ability of all husbands, except one, was totally wasted on that count. They ended up with nothing beneficial except the lone satisfaction of their sexual drive.

2. Experience shows that woman is a genre more delicate than man. For a major portion of the year, she does not remain physically amenable to intimacy. There are conditions and circumstances in married life when it is not possible for her to fulfill the rights of even one husband, let alone more than one husband seeking her physical attention.

3. Since man is healthier and stronger in terms of physical power

as compared to woman, man should, if his sexual strength is above average and he cannot find satisfaction by limiting himself to one woman, have the opportunity, of course by permissible means, to marry twice and thrice. If this is not allowed, he will take to impermissible ways of satisfying his desires, and in that process, he will ruin the whole society. But, the likelihood that woman could bring about such ruination is very remote.

This question is so important in the Shari'ah of Islam that it has not only ruled the second marriage of a woman unlawful when she is already married to someone else, but it also goes farther when it rules that, should the husband of a woman divorce her, or die, she still cannot marry another person until after the expiry of her 'iddah or waiting period.

إِلَّا مَا مَلَكَ أَيْمَانُكُمْ (except the bondwomen you come to own): This sentence is an exception from the rule set in **الَّذِي لَمْ يَعْلَمْتُ مِنِ الْأَنْسَابِ** (the women already bound in marriage).

It means that it is not permissible that a woman who already has a husband be taken in marriage by another person, unless she comes in the ownership of a person as a bondwoman. This happened when Muslims had to carry out *jihad* against the infidels of *Dar-al-harb* (a non-Muslim state without a treaty of peace with the Muslims). As a result of a valid war with them women prisoners might have been brought to the Islamic state. If their non-Muslim husbands remained behind in their original non-Muslim State, their bond of marriage with them used to be terminated by their entry into the Islamic state, and it was lawful for a Muslim to marry her, if she was a Christian, a Jew or had embraced Islam. Similarly, if the head of the Islamic state opted to make her a bondwoman and had given her to a participant in the war as his share in the spoils, he could also enjoy her company. However, this marriage or enjoyment was permissible only after she goes through at least one menstruation period after her entry into the Islamic state. If it appeared that she was pregnant from her previous husband, it was necessary to wait until she delivers the child.

Rulings:

1. If a disbelieving woman embraces Islam in *Dar al-Harb* while her husband is a disbeliever, she will be released from the bond of

marriage with him after the expiry of three menstrual periods.

2. If a disbelieving woman embraces Islam in Dār al-Islam and her husband is a disbeliever, then, the local legal authority should induce the husband to think about accepting Islam. If he refuses to become a Muslim, the Muslim judge should bring about a separation between the two. This separation will be taken as the divorce after which, the woman completes her period of 'iddah and becomes free to marry any Muslim of her choice.

كُتِبَ اللَّهُ عَلَيْكُمْ (It has been written by Allah for you): It means that the unlawfulness of marriage with women identified by Allah is something determined by Him.

وَأُخْلِلَ لَكُمْ مَعْرِرَةً ذُنُوكُمْ (All except them have been permitted for you): It means that women other than those whose unlawfulness has been mentioned upto this point are lawful for you; for example, the daughter of an uncle, the daughter of a maternal aunt, the sister born of a maternal uncle, and the wife of a maternal or paternal uncle - after their death or after they have divorced her - subject to the condition that any other reason of prohibition does not exist. In addition to that, there is the wife of an adopted son who can be lawfully married after he divorces, or dies; so also, if one's wife dies, he can marry her sister - these being some of the many lawful options available. All these have been covered under the generality of **وَأُخْلِلَ لَكُمْ مَعْرِرَةً ذُنُوكُمْ** (All except them).

Ruling:

It is not permissible to have more than four wives simultaneously. Detailed comments on this subject have already appeared in the beginning of Surah Al-Nisā'. Not finding any reference to this in the immediate context of the present verses should not lead anyone to misunderstand that, may be, the generality of the Qur'ānic words, **وَأُخْلِلَ لَكُمْ مَعْرِرَةً ذُنُوكُمْ** (All except them) allows unrestricted marriage with women. Besides the women, marriage with whom is unlawful as declared in the Holy Qur'ān, there are several others in this category as mentioned in the noble *Aḥādīth*, indications of which appear in the Qur'ānic verses also and to which we have been pointing out in our comments.

أَنْ تَبْغُونَ بِأَمْوَالِكُمْ (that you may seek {to marry} through your wealth):

It means that the description of women unlawful for marriage is there to induce you to look for lawful women with the help of your wealth and enter into marriage with them. In *Aḥkām al-Qur'ān*, Abū Bakr al-Jassās رحمه اللہ علیہ writes that this part of the verse tells us two things. Firstly, marriage cannot materialize devoid of dower (even if the parties to marriage decide between themselves that the marriage will take place without dower, still, dower will be necessary, details of which are available in books of *Fiqh*.) Secondly, it tells us that dower (*mahr*) should be something which can be termed as "*māl*" (inclusive of wealth, property, assets etc.) According to the Hanafiyah, *mahr* (dower) should not be less than ten *dirhams*. One *dirham* is equivalent to 3 1/2x17 grains Troy of silver.

مُحْصِّنٍ غَيْرِ مُسَافِرِينَ (binding yourself in marriage, and not only for lust): It means that one should seek lawful women with the help of one's assets and it should be clearly understood that the seeking of women is to safeguard modesty and chastity, which is the crucial purpose of a marriage. And it is through marriage alone that the desired objective has to be achieved and certainly not through spendings to find women for *zīnā* (fornication). This tells us that, no doubt the fornicators too spend out of their assets, but that spending is patently unlawful, and benefiting from a woman who has been procured by such spending is never lawful. The addition of ¹غَيْرِ مُسَافِرِينَ (not for lust) here serves two purposes. As obvious, it forbids *zīnā* (fornication) while it also points out that the purpose of *zīnā* is nothing but to run after lust and to waste one's semen for unlawful enjoyment - because it is not aimed at the seeking of children and the preservation of the human race. Muslims must stay chaste investing their strength where it is due in the best interest of human procreation, the method of which is to have a wife in marriage, or a bondwoman - in case one comes to have one.

فَمَا اسْتَحْتَمْتُ بِمَنْهُنَّ فَاتُوهُنَّ أَجُورُهُنَّ فِرْضَةٌ (So, whoever of them you have benefited from, give them their due as obligated): 'Benefiting' in this verse refers to coition and it means that the payment of full dower is

1. Literally, it means 'flowing of water' and indicates to seeking ejaculation out of lust. (Editor)

due on the husband only when he had benefited from her company by having sex with her. If, after the initial marriage contract the wife has not come to live with the husband who thus does not get the opportunity to 'benefit' from her company, and he divorces her before having that opportunity, the payment of *mahr* (dower) due against him becomes half. Special attention has been drawn in this verse to the situation when, once this 'benefit' has been received from some woman, the payment of her *mahr* becomes obligatory on all counts. Any shortcoming in doing so is against the letter and spirit of Muslim law. Moreover, the universal human sense of honour dictates that consequent to the purpose of marriage having been achieved, there should be no failing or delaying in giving the wife her due - however, the Sharī'ah gives the woman the additional right that she can, if the *mahr* (dower) is prompt (*mu'ajjal*), refuse to go to her husband until the payment of the *mahr* has been made to her.

The unlawfulness of *Mut'ah*

The root of the Arabic word, **استمتع** : *istimta'* is - ع - ت - م (mīm - tā - 'ain) which means to derive benefit. Any benefit derived from a person or from wealth, property, assets etc. is called *istimta'*. According to Arabic grammar, the addition of the letters س : *sīn* and ت : *tā'* to the root of any word gives the meaning of seeking. Based on this lexical explanation, the simple and straight sense of the Qur'ānic expression, **فَعَلِمْتُ** (you have benefited), as understood by the entire Muslim *ummah* from the revered early elders to their successors and followers, is just what we have stated a little earlier. But, a sect¹ says that it means the conventional *mut'ah* and, according to its adherents, this verse proves that *mut'ah* is *halāl* (lawful). Therefore, it is pertinent here to give a brief account of *mut'ah* and its unlawfulness.

Mut'ah which was in vogue before the advent of Islam was a temporary contract between a man and a woman for having sexual relationship between them for a specified period in exchange of money or a specified kind offered by the man to the woman. This type of contract, which was never meant to create permanent rights and obligations of marriage, was clearly prohibited by the Holy Qur'ān and Sunnah, however, this particular sect claims that it is still *halāl*

1. [i.e. the Shi'ites] (editor).

(permissible). They sometimes seek support to this claim from the present verse just on the ground that the word 'mut'ah' has been derived from the same root wherefrom the word مُسْتَحْشِنَةُ used in this verse has been derived. Obviously, this argument is too far-fetched, and the present verse itself is sufficient to refute it, because before the word مُسْتَحْشِنَةُ, the Holy Qur'an has used the words مُحْصِنَةٍ غَيْرُ مُسْكَارِجِينَ (binding yourself in marriage and not only for lust) which clearly prove that the sexual relationship approved by the Holy Qur'an is the only one which aims at chastity through the permanent bond of marriage, and not a relationship based on satisfying lust for a temporary period which has been termed by the Holy Qur'an as 'flowing water'.

Now, it is obvious that the contract of *mut'ah* has nothing to do with this concept. It neither creates permanent rights and obligations, nor does it bring about a family set-up, nor does it aim at having children and maintain chastity. It is nothing but to satisfy the sexual desire for a short period of time.

As a result, the woman with whom *mut'ah* is done is not given even the status of a wife who could inherit from her very pragmatic counterpart - who, for that matter, does not even have the grace to count her among his recognized wives. The reason is very simple as the purpose here is nothing but sexual gratification, an attitude which drives men and women to keep hunting for ever-new sex-partners in a temporary setting. If this be the state of affairs, *mut'ah* (referred to as temporary marriage) can never be taken as the guarantor of modesty and chastity; it is, on the contrary, its very enemy.

Therefore, the Qur'anic words مُحْصِنَةٍ غَيْرُ مُسْكَارِجِينَ are more than enough to rule out the possibility of *mut'ah* being meant by the present verse.

The author of *Hidayah* has attributed to Imām Mālik that, according to him, *mut'ah* is permissible. But, this attribution is totally incorrect as clarified by the commentator of *Hidayah* and other respected scholars who say that the author of *Hidayah* has attributed this view to Imām Mālik inadvertently.

However, there are some of those who claim that Sayyidnā Ibn 'Abbas رضى الله عنه believed in the lawfulness of *mut'ah* right upto his later years, although this is not so. Imām al-Tirmidhī, devoting a

chapter to "mut'ah", has reported two *ahādīth*. The first one is as follows:

عن على بن أبي طالب أن النبي صلى الله عليه وسلم نهى عن متنة
النساء وعن لحوم الحمراء لأهلية زمن خير

'Alī ibn Abī Ṭalib رضي الله عنه reports that the Holy Prophet ﷺ on the occasion of the battle of Khyber, prohibited *mut'ah* with women and from (eating) the meat of domestic donkeys.

This *hadīth* appears in al-Bukhārī and Muslim as well. The second *hadīth* reported by Imām al-Tirmidhī is given below:

عن ابن عباس قال: إنما كانت المتنة في أول الإسلام حتى إذا نزلت الآية
الآية على أزواجهم أو ما ملكت أيمانهم قال ابن عباس: فكل فرج سواهما
 فهو حرام

Ibn 'Abbas رضي الله عنه says: *Mut'ah* was there only in the early period of Islam until the verse - (إِنَّمَا كُلَّى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ) - was revealed. Then, he said: All private parts other than these are unlawful (that is other than those of the legally wedded wife and the bondwoman one may come to have).

Nevertheless, this much has to be said that Sayyidnā Ibn 'Abbās رضي الله عنه took *mut'ah* to be permissible upto a certain time. Then, it was on the good counsel of Sayyidnā 'Alī رضي الله عنه (as in Sahīh Muslim, v.1, p.452) and under the chastening impact of the noble verse: رَأَى اللَّهُ عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ that he revoked his earlier position, as indicated in the narration from Tirmidhī.

It is very strange that the sect which believes in the lawfulness of *mut'ah* - despite its claim to love and obey Sayyidnā 'Alī رضي الله عنه - elects to oppose no less a person than him on this particular issue.

The author of Ruh al-Ma'āni reports from Qādī 'Ayād that *mut'ah* was lawful before the battle of Khayber, but it was made unlawful during it. After that, it was declared lawful on the day of the Conquest of Makkah, but it was after three days that it was proclaimed as unlawful for ever.

There is yet another point worthy of our attention. The Qur'ānic statement:

وَالَّذِينَ هُمْ لِنُفُوذِهِمْ حَافِظُونَ إِلَّا عَلَىٰ آزْوَاجِهِمْ أَوْ مَا مَلَكُتُ ابْنَانُهُمْ فَإِنَّهُمْ غَيْرُ مُلُومِينَ .

(And those who guard their private parts, save from their wives or from their bondwomen, then, they are not blameworthy).

is so explicit that it admits of no other interpretation. It shows the unlawfulness of *mut'ah* very clearly. Seeking flimsy support from some rare and unauthentic readings is absolutely incorrect.

To sum up our earlier submissions, there is no absolute proof to support the view that the Qur'anic word, *إِنْتَعْتَمْ* (you have benefited) refers to conventional *mut'ah*. This is just a remote possibility which can never override the absolute proof contained in *إِلَّا عَلَىٰ آزْوَاجِهِمْ أَوْ مَا مَلَكُتُ ابْنَانُهُمْ* cited above. Specially, keeping in view the well-settled principle of Islamic jurisprudence, that where two arguments or two interpretations are equally possible, the one supporting prohibition is always preferred.

Ruling:

Like *mut'ah*, a time bound marriage is also unlawful. A time-bound marriage (termed in Islamic jurisprudence as *al-nikāh al-muwaqqat*) is a marriage entered into for a fixed time. The difference between the two is that *mut'ah* is done by using the words of *mut'ah*. A time-bound marriage is done by saying the word, *nikāh* which is normally used for regular marriage.

وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُمْ بِهِ مِنْ بَعْدِ الْمُرْبَضَةِ (And there is no sin on you in what you mutually consent to after the {initial} settlement): This sentence in the verse means that *mahr* or dower which has been fixed mutually is not, in the real sense, absolute and definitive, and something to which nothing could be added or deleted. On the contrary, a husband can add something on his own accord on the fixed *mahr*, and the wife too, if she so desires, willingly and happily, can forgo a part of her *mahr*, or the whole of it. The generality of the words also allows a situation where a woman willingly agrees to defer the payment of a dower which was originally settled to be prompt.

إِنَّ اللَّهَ كَانَ عَلَيْهِ كُلُّ حِكْمَةٍ (Surely, Allah is All-Knowing, All-Wise): The addition of this sentence towards the end of the verse tells us two things. Firstly, that All knows. He is aware of everything. His injunctions are

there to be complied with. If somebody acts against these and even if a judge, a ruler, or any other human being ever gets to find out about it, Allah, in His most exalted state of being, knows all about this and everything else. One must keep fearing Him under all circumstances. Secondly, that the injunctions He has revealed are all based on *hikmah* or wisdom. In essence, *Hikmah* (Allah's wisdom) is too deep to be understood by everyone. The injunctions concerning what is unlawful and lawful as given in these verses, whether or not one understands their cause, reason or justification, must be believed in, accepted and obeyed. This is because, even though we may not know the *raison d'être*, the cause, reason or justification, it hardly matters, for the Creator and the Master of the Command, Allah Almighty certainly knows it all, being the All-Knowing, the Wise.

There are many people, educated but ignorant, visibly spread out in our contemporary Muslim and non-Muslim societies, who go about gopher-like, searching for the causes of Divine injunctions. When they fail to find any, they side-track the need to comply with the injunction by saying that the Word of God was, God-forbid, contrary to the requirements of the modern age, or worse still, unsuitable. The words of the verse have silenced such people for ever by telling them: 'You are ignorant. Your Creator is All-Knowing. You lack understanding. Allah is All-Wise. Do not make your reason the touchstone of the Truth.'

Verse 25

وَمَنْ لَمْ يُسْتَطِعْ مِنْكُمْ طُولًا أَنْ يَتَكَبَّرَ الْمُحَصَّنُونَ
 فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ قَاتِلِكُمُ الْمُؤْمِنِينَ وَاللَّهُ أَعْلَمُ
 بِإِيمَانِكُمْ بَعْضُكُمْ مِنْ بَعْضٍ فَإِنْ كُحْوَهُنَّ بِإِذْنِ أَهْلِهِنَّ
 وَأَتُوْهُنَّ أُجْوَهُنَّ بِالْمَعْرُوفِ مُحَصَّنُونَ غَيْرُ مُسْفِحُونَ وَلَا
 مُتَّخِذُونَ أَخْدَانٍ فَإِذَا أُحْصِنَ فَإِنْ آتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ
 نِصْفُ مَا عَلَى الْمُحَصَّنِ مِنَ الْعَذَابِ ذَلِكَ لِمَنْ خَسِيَ
 الْعَنَتْ مِنْكُمْ وَأَنْ تَصْبِرُوا حَتَّىٰ لَكُمْ وَاللَّهُ غَفُورٌ رَّحِيمٌ ﴿٤٥﴾

And the one who cannot afford to marry the free Muslim women, then (he may marry) the one you own of the Muslim girls. And Allah knows best about your faith. You are similar to each other. So, marry them with the permission of their masters and give them their dues, as recognized, they being bound in marriage, not going for lust, nor having paramours. So, once they have been bound in marriage, then, if they commit a shameful act, they shall be liable to half of the punishment prescribed for the free women. That is for those of you who fear falling in sin. And that you be patient is better for you. And Allah is Most-Forgiving, Very-Merciful. [25]

It is in continuation of the injunctions relating to marriage which have been appearing earlier that the text now takes up the option of marriage with bondwomen who qualify as such under the stipulations of the Shari'ah of Islam. Then, the injunction of *Hadd* punishment concerning them has been added along since the status of a bondman and bondwoman is different from a free man and a free woman. Detailed explanation follows.

Commentary

The word, *طاول* (*taul*) in the Qur'anic text signifies power, capability and means. The sense of the verse is that one who does not have the capability or means to marry free Muslim women, can marry Muslim bondwomen. This clearly indicates that one should, as far as possible, marry only a free woman and simply not marry a bondwoman. But, should it be that one has to marry a bondwoman, he should look for a Muslim bondwoman.

This is the very juristic position of Imām Abū Hanīfah according to whom marrying a bondwoman, specially a bondwoman from the people of the Book (Jews or Christians) while having the power and means to marry a free woman, is *makrūh* (not desirable).

According to Imām Shāfi'i and other Imams, marrying a bondwoman while having the power and means to marry a free woman is unlawful (*haram*), and marrying a bondwoman from the people of the Book is absolutely impermissible.

In short, to avoid marrying a bondwoman is, under all conditions,

certainly better for a free man. However, if one has to do so under personal lack of choice, marrying a Muslim bondwoman is better. The reason is that the offspring from a bondwoman becomes automatically bonded to the owner of the bondwoman. Furthermore, there remains the danger that the offspring from the non-Muslim bondwoman could adopt a religion other than Islam following the example of the mother. So, in order to rescue the children from bondage and to ensure that they remain Muslims, it is necessary that the mother of the children should be free. If she is a bondwoman, let her, at the least, be necessarily a Muslim, so that the faith of the child remains secure for future flowering. For this reason, respected scholars have said that marrying a free woman from the people of the Book is, no doubt, correct, but, staying away from doing so is better; and in a time like this, its importance is much too obvious to be emphasized as Jewish and Christian women usually marry Muslim men to influence the husband himself, and his children, into adopting their religion.

This much established, the text then says: وَاللّٰهُ أَعْلَمُ بِمَا تَكُونُ مِنْ بَعْضٍ يَعْصُكُمْ مِنْ بَعْضٍ It means that Allah is fully aware of your faith, that is, 'I'mān' or faith is the criterion of precedence. It is very likely that a bondman or bondwoman may be far ahead of free men and women on the scale of faith. Therefore, the option of marriage with a Muslim bondwoman should not be taken as absolutely contemptible. Instead the fact that she has faith in Islam should be appreciated. The expression يَعْصُكُمْ مِنْ بَعْضٍ appearing at the end, translated here as 'you are similar to each other', means that human beings, free or in bondage, all come from one species, the children of Adam and all were born of only one soul. That one is better than the other depends on 'I'mān' (faith) and *Taqwā* (righteous conduct in fear of Allah, the Creator). According to al-Tafsīr al-Mazhārī, 'these two sentence are there for people to get familiarized with and become acceptance-prone to marriage with bondwomen and get rid of any attitude of contempt for such marriage

(فَانْكِحُوهُنَّ يَأْذُنُ أَهْلَهُنَّ وَاتْتُوْهُنَّ أُجُورُهُنَّ بِالْمَعْرُوفِ) (So, marry them with the permission of their masters and give them their dues): It means that, should they refuse to give permission, the marriage of the bondwoman will not be correct because the bondwoman does not possess the control over her person. The same rule governs the bondman as he too cannot marry

without the permission of his master.

Then it was said that one who marries a bondwoman should pay her *mahr* (dower) promptly, honestly and gracefully, that is, without hedging and delaying, and making sure that the payment is made in full, and that no trouble is caused to the bondwoman in this matter just because she happens to be a bondwoman. The juristic position taken by Imām Mālik in this connection is that *mahr* (dower) is the right of the bondwoman. Other Imāms say that the master of the bondwoman is the one who shall become the owner of what is received in payment of the dower of the bondwoman.

مُحَصَّنٌ غَيْرُ مُسَفِّحٍ وَلَا مُتَخَذِّلٌ (they being bound in marriage, not going for lust, nor having paramours): It means that marriage with Muslim bondwomen should be contracted while they are observers of chastity being neither "*musafīhat*", that is, open fornicators, nor keepers of clandestine paramours. It may be noted that the text, though refers to the seeking of chaste bondwomen for marriage at this place, yet it is also much better to stay away from marrying a fornicating free woman as well.

Since this verse has declared that if one cannot afford to marry a free woman, the second option for him is to marry a bondwoman. This also proves that *mut'ah* (معتہ) is not permissible, because, had *mut'ah* been permissible, a person who could not afford to marry a free woman could have gone for the easiest alternate by doing *mut'ah*¹ as it would have gratified his sexual desire and, in addition to that, the relative financial burden of this deal would have been much less than that of a regular marriage. Furthermore, the Qur'anic words مُحَصَّنٌ غَيْرُ مُسَفِّحٍ identify the trait of the bondwomen - an observer of chastity while being bound in marriage and no fornicator. Now, as far as *mut'ah* is concerned, it is all '*safh*', nothing but spillage and rank whoredom. One woman gets used by several men in short spans of time. The offspring, if it comes, cannot be credibly ascribed to anyone. There goes the benefit of procreation. What becomes of the unique reservoir of human strength all such people possess, is simply that the whole thing goes down the drain just to oblige the wanton pursuit of sex.

1. For details see the commentary (on verse 24) in the previous section.

It means that after the bondwomen have been bound in marriage and their observance of chastity has been given a safe cover, if they commit *zīnā*, an act of shame, they shall be liable to half of the punishment prescribed for the free women. This refers to unmarried free women. If unmarried free man and woman happen to commit *zīnā*, the punishment is one hundred lashes, which appears in Surah An-Nūr (24:2). As for the married man and woman committing *zīnā* (adultery), the punishment is *rajm* which is death by stoning. Since this particular punishment cannot be reduced to half, all four Imāms agree on the position that the punishment of *zīnā* committed by a bondman or bondwoman, married or unmarried, is fifty lashes. The injunction relating to the bondwomen has been mentioned in the present verse, but the question of the bondman too becomes clear from the obvious analogy of the text.

ذِلِكَ لِمَنْ خَشِيَ الْفَتَنَ مِنْكُمْ : It means that the permission to marry a bondwoman is for a person who apprehends that he might fall into the sin of fornication.

وَإِنْ تَصْرِفُوهُ خَيْرٌ لَّكُمْ (And that you be patient is better for you); that is, if a person, despite the apprehension of falling into *zīnā*, exercises restraint and keeps himself morally pure rising above the pull of his sexual desire, then, this state of being is better than that one marries bondwomen.

وَاللَّهُ عَفُورٌ رَّحِيمٌ (And Allah is Most-Forgiving, Very-Merciful): It means that, no doubt, marrying bondwomen is *makrūh* (not desirable) yet, should one go on to do something in this line, Allah Almighty will still forgive him. Then, He is Very-Merciful too, because He allowed marriage with bondwomen and did not make it totally prohibited.

Special Note

Bondmen and bondwomen mentioned in the explanation of the present verse represent the *Shari'i* bondmen and bondwomen. Men and women from among the disbelievers who were taken prisoners during *Jihād* were given to the *Mujahidīn* as part of the distribution of spoils by the Amir al-Mu'minīn, the Chief Executive of Muslims. These prisoners became the bondmen and bondwomen. Their offspring too remained in bondage (with the exception of some cases which appear in due details in books of *Fiqh*). Today Muslims have forsaken taking